

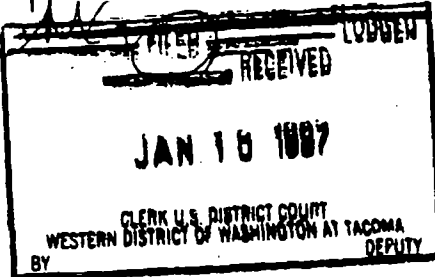
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Regional Hearing Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BURLINGTON NORTHERN RAILROAD  
COMPANY, BN LEASING  
CORPORATION, AMSTED  
INDUSTRIES INCORPORATED,  
PIONEER BUILDERS SUPPLY, INC.,  
SOUTH TACOMA L.L.C.,  
ATLAS FOUNDRY &  
MACHINE COMPANY, A DIVISION  
OF TIC UNITED CORP.,  
CITY OF TACOMA, DEPARTMENT OF  
PUBLIC UTILITIES, LIGHT DIVISION,

Defendants.

C96-5871

CIVIL ACTION NO.

CONSENT DECREE

Regional Hearing Clerk

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the South Tacoma Field Operable Unit of the Commencement Bay South Tacoma Channel Superfund Site ("STF" or "Site") in Tacoma, Washington, together with accrued interest; and (2) performance of studies and response work by the Defendants at the Site consistent with the National Oil and Hazardous Substance Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Washington (the "State") on April 26, 1995 of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action for the Site. The EPA also notified the State of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural

resources under State trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. §9622(j)(1), EPA notified the Department of Interior on April 25, 1995 of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40685.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, a group of PRPs (the "PRP Site Group") commenced in October 1990, under an Administrative Consent Order with EPA, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430;

1           H.    The PRP Site Group completed a Remedial  
2 Investigation ("RI") Report and Feasibility Study ("FS") Report  
3 on April 8, 1993.

4           I.    Pursuant to Section 117 of CERCLA, 42 U.S.C.  
5 § 9617, EPA published notice of the completion of the FS and of  
6 the proposed plan for remedial action on June 15, 1994, in a  
7 major local newspaper of general circulation. EPA provided an  
8 opportunity for written and oral comments from the public on the  
9 proposed plan for remedial action. A copy of the transcript of  
10 the public meeting is available to the public as part of the  
11 administrative record upon which the Regional Administrator based  
12 the selection of the response action.

13           J.    The decision by EPA on the remedial action to be  
14 implemented at the Site is embodied in a final Record of Decision  
15 ("ROD"), executed on September 29, 1994, on which the State has  
16 given its concurrence. The ROD includes EPA's explanation for  
17 any significant differences between the final plan and the  
18 proposed plan as well as a responsiveness summary to the public  
19 comments. Notice of the final plan was published in accordance  
20 with Section 117(b) of CERCLA.

21           K.    Based on the information presently available to  
22 EPA, EPA believes that the Work will be properly and promptly  
23 conducted by the Settling Defendants if conducted in accordance  
24 with the requirements of this Consent Decree and its appendices.

1 L. For the purposes of Section 113(j) of CERCLA, the  
2 Remedial Action selected by the ROD and the Work to be performed  
3 by the Settling Defendants shall constitute a response action  
4 taken or ordered by the President.

5 M. The Parties recognize, and the Court by entering  
6 this Consent Decree finds, that this Consent Decree has been  
7 negotiated by the Parties in good faith and implementation of  
8 this Consent Decree will expedite the cleanup of the Site and  
9 will avoid prolonged and complicated litigation between the  
10 Parties, and that this Consent Decree is fair, reasonable, and in  
11 the public interest.

12 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

13 II. JURISDICTION

14 1. This Court has jurisdiction over the subject  
15 matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and  
16 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has  
17 personal jurisdiction over the Settling Defendants. Solely for  
18 the purposes of this Consent Decree and the underlying Complaint,  
19 Settling Defendants waive all objections and defenses that they  
20 may have to jurisdiction of the Court or to venue in this  
21 District. Settling Defendants shall not challenge the terms of  
22 this Consent Decree or this Court's jurisdiction to enter and  
23 enforce this Consent Decree.

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3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant(s) for whom such activities are

1 performed in accordance with Appendix F within the meaning of  
2 Section 107(b) (3) of CERCLA, 42 U.S.C. § 9607(b) (3).

3 **IV. DEFINITIONS**

4 4. Unless otherwise defined herein, terms used in  
5 this Consent Decree which are defined in CERCLA or in regulations  
6 promulgated under CERCLA shall have the meaning assigned to them  
7 in CERCLA or in such regulations. Whenever terms listed below  
8 are used in this Consent Decree or in the appendices attached  
9 hereto and incorporated hereunder, the following definitions  
10 shall apply:

11 "CERCLA" shall mean the Comprehensive Environmental  
12 Response, Compensation, and Liability Act of 1980, as amended,  
13 42 U.S.C. §§ 9601 et seq.

14 "Consent Decree" shall mean this Decree and all appendices  
15 attached hereto (listed in Section XXIX). In the event of  
16 conflict between this Decree and any appendix, this Decree shall  
17 control.

18 "Day" shall mean a calendar day unless expressly stated to  
19 be a working day. "Working day" shall mean a day other than a  
20 Saturday, Sunday, or Federal holiday. In computing any period of  
21 time under this Consent Decree, where the last day would fall on  
22 a Saturday, Sunday, or Federal holiday, the period shall run  
23 until the close of business of the next working day.



1 "EPA" shall mean the United States Environmental Protection  
2 Agency and any successor departments or agencies of the  
3 United States.

4 "Ecology" or "WDOE" shall mean the Washington State  
5 Department of Ecology and any successor departments or agencies  
6 of the State.

7 "Future Response Costs" shall mean all costs not  
8 inconsistent with the NCP, including, but not limited to, direct  
9 and indirect costs, that the United States incurs in reviewing or  
10 developing plans, reports and other items pursuant to this  
11 Consent Decree, verifying the Work, or otherwise implementing,  
12 overseeing, or enforcing this Consent Decree, including, but not  
13 limited to, payroll costs, contractor costs, travel costs,  
14 laboratory costs, the costs incurred pursuant to Sections VII  
15 (Remedy Review), IX (Access and Institutional Controls)  
16 (including, but not limited to, attorneys fees and any monies  
17 paid to secure access and/or to secure institutional controls,  
18 including the amount of just compensation), XV (Emergency  
19 Response), and Paragraph 85 (Work Takeover) of Section XXI  
20 (Covenants Not to sue by Plaintiff). Future Response Costs shall  
21 also include all Interim Response Costs.

22 "Interim Response Costs" shall mean all costs not  
23 inconsistent with the NCP, including direct and indirect costs,  
24 incurred by the United States in connection with the Site between  
25 March 1, 1995, and the effective date of this Consent Decree.

1 "Interest" shall mean interest at the rate specified for  
2 interest on investments of the Hazardous Substance Superfund  
3 established under Subchapter A of Chapter 98 of Title 26 of the  
4 U.S. Code, compounded on October 1 of each year, in accordance  
5 with 42 U.S.C. § 9607(a).

6 "National Contingency Plan" or "NCP" shall mean the National  
7 Oil and Hazardous Substances Pollution Contingency Plan  
8 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,  
9 codified at 40 C.F.R. Part 300, and any amendments thereto.

10 "Operation and Maintenance" or "O & M" shall mean all  
11 activities required to maintain the effectiveness of the Remedial  
12 Action as required under the Operation and Maintenance Plan  
13 approved or developed by EPA pursuant to this Consent Decree and  
14 the Statement of Work ("SOW").

15 "Owner Settling Defendants" shall mean the Settling  
16 Defendants listed in Appendix E.

17 "Paragraph" shall mean a portion of this Consent Decree  
18 identified by an arabic numeral or an upper case letter.

19 "Parties" shall mean the United States and the Settling  
20 Defendants.

21 "Past Response Costs" shall mean all costs, including, but  
22 not limited to, direct and indirect costs, that the United States  
23 incurred, whether or not yet paid, at or in connection with the  
24 Site through February 28, 1995, plus Interest on all such costs  
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1 which has accrued pursuant to 42 U.S.C. § 9607(a) through the  
2 date of payment as provided in this Consent Decree.

3 "Performance Standards" shall mean the cleanup standards and  
4 other measures of achievement of the goals of the Remedial  
5 Action, specifically set forth in Section 9 of the ROD except for  
6 Section 9.1.5, and Section II of the SOW.

7 "Plaintiff" shall mean the United States of America.

8 "Project Coordinator" or "Alternate Project Coordinator"  
9 shall mean the respective designees of EPA and of Settling  
10 Defendants as described more fully in Section XII (Project  
11 Coordinators) of this Consent Decree.

12 "RCRA" shall mean the Solid Waste Disposal Act, as amended,  
13 42 U.S.C. §§ 6901, et seq. (also known as the Resource  
14 Conservation and Recovery Act).

15 "Record of Decision" or "ROD" shall mean the EPA Record of  
16 Decision relating to the South Tacoma Field Operable Unit of the  
17 Commencement Bay South Tacoma Channel Superfund Site, signed on  
18 September 29, 1994, by the Regional Administrator, EPA  
19 Region 10, and all attachments thereto. The ROD is attached as  
20 Appendix A.

21 "Remedial Action" shall mean those activities, except for  
22 Operation and Maintenance and the Stormwater Work, to be  
23 undertaken by the Settling Defendants to implement the ROD, in  
24 accordance with the final SOW and the final Remedial Design and  
25 Remedial Action Work Plans and other plans approved by EPA.

1 "Remedial Action Work Plan" shall mean the document  
2 developed pursuant to Paragraph 12 of this Consent Decree and  
3 approved by EPA, and any amendments thereto.

4 "Remedial Design" shall mean those activities to be  
5 undertaken by the Settling Defendants to develop the final plans  
6 and specifications for the Remedial Action pursuant to the  
7 Remedial Design Work Plan.

8 "Remedial Design Work Plan" shall mean the document  
9 developed pursuant to Paragraph 11 of this Consent Decree and  
10 approved by EPA and amendments thereto.

11 "Section" shall mean a portion of this Consent Decree  
12 identified by a roman numeral.

13 "Settling Defendants" shall mean those Parties identified in  
14 Appendices D (Settling Defendants) and E (Owner Settling  
15 Defendants).

16 "Site" shall mean the South Tacoma Field Operable Unit of  
17 the Commencement Bay South Channel Superfund Site, encompassing  
18 approximately 260 acres, located from approximately South 36th  
19 Street on the north, South 56th Street on the south, Tyler Way on  
20 the west and Adams and Washington Streets on the east in Tacoma,  
21 Pierce County, Washington and depicted generally on the maps  
22 attached as Appendix C. The term "Site" includes the areal  
23 extent of contamination and all suitable areas in very close  
24 proximity to the contamination necessary for implementation of  
25 the response action.

1 "State" shall mean the State of Washington.

2 "Statement of Work" or "SOW" shall mean the statement of  
3 work for implementation of the Remedial Design, Remedial Action,  
4 and Operation and Maintenance at the Site, as set forth in  
5 Appendix B to this Consent Decree and any modifications made in  
6 accordance with this Consent Decree.

7 "Stormwater Work" shall mean all Work required or described  
8 in Section 9.1.5 of the ROD.

9 "Supervising Contractor" shall mean the principal contractor  
10 retained by the Settling Defendants to supervise and direct the  
11 implementation of the Work under this Consent Decree.

12 "United States" shall mean the United States of America.

13 "Waste Material" shall mean (1) any "hazardous substance"  
14 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any  
15 pollutant or contaminant under Section 101(33), 42 U.S.C.  
16 § 9601(33); and (3) any dangerous waste under the Washington  
17 State Dangerous Waste Regulations at Washington Administrative  
18 Code ("WAC") Chapter 173-303.

19 "Work" shall mean all activities Settling Defendants are  
20 required to perform under this Consent Decree, except those  
21 required by Section XXV (Retention of Records).

## 22 V. GENERAL PROVISIONS

### 23 5. Objectives of the Parties.

24 The objectives of the Parties in entering into this  
25 Consent Decree are to protect public health or welfare or the  
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1 environment at the Site by the design and implementation of  
2 response actions at the Site by the Settling Defendants, to  
3 reimburse response costs of the Plaintiff, and to resolve the  
4 claims of Plaintiff against Settling Defendants as provided in  
5 this Consent Decree.

6           6.   Commitments by Settling Defendants.

7           a.   Settling Defendants shall finance and perform the  
8 Work in accordance with this Consent Decree, the ROD except for  
9 Section 9.1.5, the SOW, and all work plans and other plans,  
10 standards, specifications, and schedules set forth herein or  
11 developed by Settling Defendants and approved by EPA pursuant to  
12 this Consent Decree. Settling Defendants shall also reimburse  
13 the United States for Past Response Costs and Future Response  
14 Costs as provided in this Consent Decree.

15           b.   The obligations of Settling Defendants to finance  
16 and perform the Work and to pay amounts owed the United States  
17 under this Consent Decree are joint and several except as set  
18 forth in Appendix F.

19           7.   Compliance With Applicable Law.

20           All activities undertaken by Settling Defendants  
21 pursuant to this Consent Decree shall be performed in accordance  
22 with the requirements of all applicable federal and state laws  
23 and regulations. Settling Defendants must also comply with all  
24 applicable or relevant and appropriate requirements of all  
25 federal and state environmental laws as set forth in the ROD and  
26

1 the SOW. The activities conducted pursuant to this Consent  
2 Decree, if approved by EPA, shall be considered to be consistent  
3 with the NCP.

4 8. Permits.

5 a. As provided in Section 121(e) of CERCLA and  
6 Section 300.400(e) of the NCP, no permit shall be required for  
7 any portion of the Work conducted entirely on-Site (i.e., within  
8 the areal extent of contamination or in very close proximity to  
9 the contamination and necessary for implementation of the Work).

10 Where any portion of the Work that is not on-Site requires a  
11 federal or state permit or approval, Settling Defendants shall  
12 submit timely and complete applications and take all other  
13 actions necessary to obtain all such permits or approvals.

14 b. The Settling Defendants may seek relief under the  
15 provisions of Section XVIII (Force Majeure) of this Consent  
16 Decree for any delay in the performance of the Work resulting  
17 from a failure to obtain, or a delay in obtaining, any permit  
18 required for the Work.

19 c. This Consent Decree is not, and shall not be  
20 construed to be, a permit issued pursuant to any federal or state  
21 statute or regulation.

22 9. Notice of Obligations to Successors-in-Title.

23 a. In the event that an Owner Settling Defendant  
24 chooses to satisfy the requirements of Paragraph 27(d) of this  
25 Consent Decree by the alternative in subsection (i) of Paragraph

1 27(d) and does not execute and record an Environmental Protection  
2 Restrictive Covenant and Access Easement in accordance with  
3 subsection (ii) thereof, such owner Settling Defendant shall,  
4 within 30 days of the effective date of this Consent Decree, with  
5 respect to property it owns or controls within the Site, submit  
6 to EPA for review and approval a notice of the access and land  
7 use restrictions imposed by this Consent Decree, to be recorded  
8 with the Auditor's Office of Pierce County, Washington, or other  
9 appropriate office where land ownership and transfer records are  
10 maintained for the subject property. The Owner Settling  
11 Defendant shall record any such notice within 10 days of EPA's  
12 approval of the notice.

13       b. At least 30 days prior to the conveyance of any  
14 title or leasehold interest in property owned by a Settling  
15 Defendant and described in Appendix F, the Settling Defendant  
16 conveying the interest shall give written notice to the grantee  
17 of this Consent Decree and any access obligations or use  
18 restrictions required by Paragraph 27, and shall give written  
19 notice to EPA of the proposed conveyance, including the name and  
20 address of the grantee, and the date on which notice was given to  
21 the grantee. Any Settling Defendant's failure to comply with the  
22 notice requirements set forth in this subParagraph and in  
23 Paragraph 27 of this Consent Decree shall not subject that  
24 Settling Defendant to any penalty or stipulated penalty under  
25 this Consent Decree, provided that Settling Defendant complies  
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1 with one of the alternative requirements of Paragraph 27(d) of  
2 this Consent Decree. In the event of any conveyance of property  
3 described in Appendix F, the Settling Defendants' obligations  
4 under this Consent Decree, including their obligations to provide  
5 or secure access pursuant to Section IX (Access and Institutional  
6 Controls), shall continue to be met by the Settling Defendants.  
7 In no event shall a conveyance release or otherwise affect the  
8 liability of the Settling Defendants to comply with the Consent  
9 Decree. If the United States gives prior approval, the grantee  
10 may perform some or all of the Work under this Consent Decree.

11 **VI. PERFORMANCE OF THE WORK BY SETTILING DEFENDANTS**

12 **10. Selection of Supervising Contractor.**

13 a. All aspects of the Work to be performed by  
14 Settling Defendants pursuant to Sections VI (Performance of the  
15 Work by Settling Defendants), VII (Remedy Review), VIII (Quality  
16 Assurance, Sampling and Data Analysis), and XV (Emergency  
17 Response) of this Consent Decree shall be under the direction and  
18 supervision of the Supervising Contractor, the selection of which  
19 shall be subject to disapproval by EPA. Within 30 days after the  
20 lodging of this Consent Decree, Settling Defendants shall notify  
21 EPA in writing, of the name, title, and qualifications of any  
22 contractor proposed to be the Supervising Contractor. EPA will  
23 issue a notice of disapproval or an authorization to proceed. If  
24 at any time thereafter, Settling Defendants propose to change a  
25 Supervising Contractor, Settling Defendants shall give such

1 notice to EPA and must obtain an authorization to proceed from  
2 EPA before the new Supervising Contractor performs, directs, or  
3 supervises any Work under this Consent Decree.

4       b. If EPA disapproves a proposed Supervising  
5 Contractor, EPA will notify Settling Defendants in writing.  
6 Settling Defendants shall submit to EPA a list of contractors,  
7 including the qualifications of each contractor, that would be  
8 acceptable to them within 30 days of receipt of EPA's disapproval  
9 of the contractor previously proposed. EPA will provide written  
10 notice of the names of any contractor(s) that it disapproves and  
11 an authorization to proceed with respect to any of the other  
12 contractors. Settling Defendants may select any contractor from  
13 that list that is not disapproved and shall notify EPA of the  
14 name of the contractor selected within 30 days of EPA's  
15 authorization to proceed.

16       c. If EPA fails to provide written notice of its  
17 authorization to proceed or disapproval as provided in this  
18 Paragraph and this failure prevents the Settling Defendants from  
19 meeting one or more deadlines in a plan approved by the EPA  
20 pursuant to this Consent Decree, Settling Defendants may seek  
21 relief under the provisions of Section XVIII (Force Majeure)  
22 hereof.

23       11. Remedial Design.

24       a. Within 45 days after EPA's issuance of an  
25 authorization to proceed pursuant to Paragraph 10, Settling  
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1 Defendants shall submit to EPA a work plan for the design of the  
2 Remedial Action at the Site ("Remedial Design Work Plan" or "RD  
3 Work Plan"). The Remedial Design Work Plan shall provide for  
4 design of the Remedial Action, in accordance with the SOW and for  
5 achievement of the Performance Standards and other requirements  
6 set forth in the ROD except Section 9.1.5, this Consent Decree  
7 and/or the SOW. Upon its approval by EPA, the Remedial Design  
8 Work Plan shall be incorporated into and become enforceable under  
9 this Consent Decree. Within 45 days after EPA's issuance of an  
10 authorization to proceed, the Settling Defendants shall submit to  
11 EPA a Health and Safety Plan for field design activities that  
12 conforms to the applicable Occupational Safety and Health  
13 Administration and EPA requirements including, but not limited  
14 to, 29 C.F.R. § 1910.120.

15       b. The Remedial Design Work Plan shall include plans  
16 and schedules for implementation of all remedial design and  
17 pre-design tasks identified in the SOW, including, but not  
18 limited to: (1) Sampling and Analysis Plan; (2) Health and  
19 Safety Plan; (3) Pilot Study Work Plan (if determined by EPA to  
20 be applicable); (4) Pilot Study Sampling and Analysis Plan (if  
21 determined by EPA to be applicable); (5) Pilot Study Health and  
22 Safety Plan (if determined by EPA to be applicable); and (6) a  
23 schedule for Preliminary Design and Prefinal Final Design. The  
24 above-described Pilot Study related plans, if determined  
25 necessary by EPA, shall be prepared following monitoring  
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1 activities described in Paragraph 14(b)(ii). In addition, the  
2 Remedial Design Work Plan shall include a schedule for completion  
3 of the Remedial Action Work Plan.

4 c. Upon approval of the Remedial Design Work Plan by  
5 EPA and submittal of the Health and Safety Plan for all field  
6 activities to EPA, Settling Defendants shall implement the  
7 Remedial Design Work Plan. The Settling Defendants shall submit  
8 to EPA all plans, submittals and other deliverables required  
9 under the approved Remedial Design Work Plan in accordance with  
10 the approved schedule for review and approval pursuant to  
11 Section XI (EPA Approval of Plans and Other Submissions). Unless  
12 otherwise directed by EPA, Settling Defendants shall not commence  
13 further Remedial Design activities at the Site prior to approval  
14 of the Remedial Design Work Plan.

15 d. The preliminary design review shall include  
16 discussions regarding, at a minimum, the following: (1) results  
17 of data acquisition activities; (2) design criteria;  
18 (3) preliminary plans and specifications; (4) draft construction  
19 schedule; and (5) draft performance standards verification plan.

20 e. The pre-final/final design submittal shall  
21 include, at a minimum, the following: (1) final plans and  
22 specifications; (2) final construction schedule; (3) final  
23 performance standard verification plan; (4) construction cost  
24 estimate; (5) Site Development Work Plan; (6) Plan for  
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1 Implementation of Institutional Controls; and (7) Plan for  
2 satisfying permitting requirements.

3 12. Remedial Action.

4 a. Concurrent with the submittal of the Final Design,  
5 the Settling Defendants shall submit a draft Remedial Action Work  
6 Plan that includes a Preliminary Construction Management Plan, a  
7 Preliminary Construction Quality Assurance Plan, and a  
8 Preliminary Construction Health and Safety Plan/Contingency Plan.  
9 The Remedial Action Work Plan shall provide for construction and  
10 implementation of the Remedial Action and achievement of the  
11 Performance Standards, in accordance with this Consent Decree,  
12 the ROD except Section 9.1.5, the SOW, and the design plans and  
13 specifications developed in accordance with the Remedial Design  
14 Work Plan and approved by EPA. Upon its approval by EPA, the  
15 Remedial Action Work Plan shall be incorporated into and become  
16 enforceable under this Consent Decree. At the same time as they  
17 submit the Final Remedial Action Work Plan, Settling Defendants  
18 shall submit to EPA a Preliminary Health and Safety Plan for  
19 field activities required by the Remedial Action Work Plan which  
20 conforms to the applicable Occupational Safety and Health  
21 Administration and EPA requirements including, but not limited  
22 to, 29 C.F.R. § 1910.120. Because the construction contractor  
23 can not be selected until the project is bid, certain components  
24 of the Draft RA Work Plan will not be submitted as part of the  
25 Draft RA Work Plan.

1           b.    The Remedial Action Work Plan shall include plans  
2 and schedules for implementing the Remedial Action including, but  
3 not limited to: (1) construction management plan;  
4 (2) construction quality assurance project plan; (3) construction  
5 health and safety plan/contingency plan; (4) transport and  
6 disposal plan; (5) list and schedule of submittals; and  
7 (6) sampling and analysis plan.

8           c.    Upon approval of the Remedial Action Work Plan by  
9 EPA, Settling Defendants shall implement the activities required  
10 under the Remedial Action Work Plan. The Settling Defendants  
11 shall submit to EPA all plans, submittals, or other deliverables  
12 required under the approved Remedial Action Work Plan in  
13 accordance with the approved schedule for review and approval  
14 pursuant to Section XI (EPA Approval of Plans and Other  
15 Submissions). Unless otherwise directed by EPA, Settling  
16 Defendants shall not commence physical Remedial Action activities  
17 at the Site prior to approval of the Remedial Action Work Plan.

18           13.   The Settling Defendants shall continue to  
19 implement the Remedial Action and O & M until the Performance  
20 Standards are achieved and for so long thereafter as is otherwise  
21 required under this Consent Decree.

22           14.   Modification of the SOW or Related Work Plans.

23           a.    If EPA determines that modification to the work  
24 specified in the SOW and/or in work plans developed pursuant to  
25 the SOW is necessary to achieve and maintain the Performance  
26

1 Standards or to carry out and maintain the effectiveness of the  
2 Remedial Action, then EPA may require that such modification be  
3 incorporated in the SOW and/or such work plans. Provided,  
4 however, that a modification may only be required pursuant to  
5 this Paragraph to the extent that it is consistent with the  
6 "scope of the remedy selected in the ROD" as defined in  
7 Paragraph 14(b).

8 b. For the purposes of this Consent Decree, the  
9 "scope of the remedy selected in the ROD" is:

10 i. STF Soils.

11 • Excavate and solidify contaminated soil (except for PCB  
12 contaminated soil) that exceeds hot spot concentration  
13 levels. These levels are defined in Table 9-1 of the  
14 ROD. Initially, excavated material will be screened to  
15 remove oversize material (greater than #4 sieve size)  
16 and debris. Subsequently, the remaining soil shall be  
17 treated with Portland cement or other binding agents  
18 and water, as necessary. The oversized material will  
19 be handled in accordance with appropriate performance  
20 standards. The treated soil shall be spread on-Site in  
21 6 to 12 inch lifts and covered with a soil or an  
22 asphalt cap. The Settling Defendants shall treat soil  
23 in an area that has been graded to manage surface water  
24 run-on and runoff. The Settling Defendants shall cover  
25 temporary soil stockpiles and use temporary control

1 methods (e.g., silt fences and/or straw bales) to  
2 prevent contaminated runoff.

3 • Excavate soil contaminated with PCBs above 50 ppm and  
4 either incinerate the soil at an approved off-Site  
5 incinerator or dispose of the soil off-Site at a  
6 permitted chemical waste landfill. Soil contaminated  
7 with PCBs above 50 ppm was found in only one location,  
8 at Pioneer Builders Supply's property (one sample at  
9 56 ppm).

10 Confirmation sampling during excavation may  
11 include, but is not limited to, hand augering, Hydro-  
12 punching, or borings at appropriate depths using field  
13 screening instruments (i.e., EPA approved field tests  
14 and/or instruments) to characterize areas with PCB  
15 concentrations greater than 50 ppm. However,  
16 laboratory confirmation shall be required for samples  
17 presumed to be below the cleanup levels.

18 • Excavate, consolidate, to the extent practicable as  
19 appropriate to mitigate future exposure and as  
20 compatible with potential future Site development, and  
21 cap soils on-Site which exceed Site capping levels  
22 defined in Table 9-2 and fall below hot spot levels  
23 defined in Table 9-1 of the ROD. Other contaminants  
24 identified in Table 9-2 in soil which exceed Method A  
25 industrial cleanup levels shall also be excavated,



1 consolidated, to the extent practicable as appropriate  
2 to mitigate future exposure and as compatible with  
3 potential future Site development, and capped.  
4 Contaminated soil shall be capped with either a soil or  
5 asphalt cap.

6 Excavation of soil is not required beyond a depth  
7 of 1 foot. However, if after excavation of 1 foot of  
8 soil, an area is still contaminated above the soil  
9 capping levels in Table 9-2, (based on sampling  
10 conducted by the Settling Defendants), the Settling  
11 Defendants shall cap this area. At their discretion,  
12 the Settling Defendants may choose to continue  
13 excavating below a depth of 1 foot until contaminants  
14 in the soil are below capping levels or until the Model  
15 Toxics Control Act ("MTCA") 15 foot point of compliance  
16 is met. If capping levels are achieved, capping would  
17 not be required in that location.

18 The areas which shall be excavated, consolidated  
19 and capped shall be determined using the data and  
20 sampling grids developed during the Remedial  
21 Investigation (RI). The decision to excavate a  
22 sampling grid may be modified if additional samples  
23 collected in that grid indicate that chemicals in the  
24 soil are below the capping levels identified in  
25 Table 9-2 of the ROD. If the Settling Defendants want  
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27

1 to use a statistical approach to determine areas  
2 needing excavation, consolidation, and capping, then  
3 statistical averaging of data shall be conducted on the  
4 additional data collected during RD/RA from the  
5 locations within the existing grid system. The  
6 Settling Defendants shall submit the statistical  
7 approach to EPA for review and approval.

8 Two types of caps, asphalt and soil, are allowed.  
9 The soil cap shall consist of a minimum of 6 inches of  
10 bank run gravel topped by a minimum of 6 inches of top  
11 soil and vegetation. Before placing the soil cap the  
12 area shall be cleared; and if required to control  
13 erosion, the subgrade shall be graded to improve  
14 drainage. The asphalt cap shall consist of a minimum  
15 of 3 inches of asphalt overlaying a minimum of 6 inches  
16 of crushed rock. A storm drain system, if necessary,  
17 shall be designed in accordance with state and local  
18 standards for areas where asphalt caps are constructed.

19 To the maximum extent practicable, the Settling  
20 Defendants shall place the asphalt cap in those areas  
21 where the highest concentrations of untreated  
22 contamination is located so that soil in these areas  
23 will be less likely to be disturbed during future  
24 development of the Site. The Settling Defendants shall  
25 prepare an O & M Plan during Remedial Action which  
26

1 shall include but is not limited to procedures for  
2 periodically inspecting and repairing (as necessary)  
3 capped areas and conducting repairs to maintain the  
4 integrity of the cap.

5 • Submit a Site development plan during RD identifying  
6 the locations where asphalt and soil caps would be used  
7 and discussing how future land development will be  
8 compatible with and maintain the integrity of the  
9 capped areas. The plan will also discuss how the caps  
10 could be modified or replaced during future development  
11 activities using the EPA guidance, Geotechnical Systems  
12 for Structures on Contaminated Sites, March 1993.

13 • Conduct air monitoring during all excavation, treatment  
14 and earth-moving activities to assess whether standards  
15 for airborne contaminant emissions have been exceeded  
16 in the work area or at the Site boundary. Monitoring  
17 will include but not be limited to particulate dust  
18 meters. Air monitoring action levels shall be included  
19 as part of the Health and Safety Plan ("HASP") and Work  
20 Plan.

21 • Either place a soil or asphalt cap in those areas of  
22 the former Swamp/Lakebed area where subsurface soil has  
23 shown chemical concentration above capping levels, or  
24 collect soil samples in the former Swamp/Lakebed area  
25 during RD to assess whether at least 1 foot of soil,

1 functionally equivalent to the emplaced soil caps, is  
2 in place above the contaminated soil. If less than  
3 1 foot of soil, with chemical concentrations below  
4 capping levels shown in Table 9-2, is found to be  
5 present in these areas, or if the existing surface soil  
6 characteristics are insufficient to provide protection  
7 against contact, the Settling Defendants shall place a  
8 soil cap or asphalt cap in these areas.

9 • Develop a plan for implementing and implement  
10 institutional controls as required by Section VII of  
11 the SOW, that may include: deed restrictions, physical  
12 access restrictions, warning signs, safety measures and  
13 educational programs designed to prohibit activities  
14 that may lead to exposure to contaminants.

15 • Monitor groundwater at selected on-Site and off-Site  
16 wells, including wells in the vicinity of the petroleum  
17 hydrocarbon contamination detected at the Amsted  
18 Industries Incorporated ("Amsted") Site. The wells to  
19 be sampled will be determined during RD. Biannual  
20 monitoring shall be conducted with 1 sampling event  
21 occurring in April and another during October of each  
22 year for two years. Subsequently, assuming there are  
23 no significant changes in water quality, groundwater  
24 shall be monitored annually. The groundwater  
25 contaminants to be monitored at Pioneer Builders  
26

1 Supply's property are the groundwater contaminants  
2 shown in Table 9-4 in the ROD. The contaminants to be  
3 monitored at the Amsted Property are total petroleum  
4 hydrocarbons and polynuclear aromatic hydrocarbons.  
5 The contaminants to be monitored at on-Site and  
6 off-Site locations are inorganics that will be  
7 presented in the Sampling and Analysis Plan. EPA will  
8 use the monitoring data to assess trends in groundwater  
9 quality. EPA will review the monitoring program at the  
10 five year review to determine whether additional  
11 actions are required or whether the monitoring program  
12 should be modified or discontinued.

13 ii. Pioneer Builders Supply.

14 • Collect additional data to define the extent of  
15 groundwater contamination. The Settling Defendants  
16 shall install groundwater monitoring wells to collect  
17 additional data during RD to aid in the pilot study, if  
18 a pilot study for air sparging is deemed necessary, for  
19 the air sparging and in situ vapor extraction system.  
20 This data shall be used to define the vertical and  
21 horizontal extent of the plume. The Settling  
22 Defendants shall install a minimum of 3 additional  
23 monitoring wells and monitor the wells quarterly for  
24 1 year. The location of additional groundwater  
25 monitoring wells shall be approved by EPA during RD.

1 The procedures used to locate the monitoring wells may  
2 include the use of "Hydro-punching" to collect soil and  
3 groundwater samples. This method may prove more cost  
4 effective, timely, and reduce the number of new  
5 monitoring wells.

6 • If necessary, implement air sparging and in situ vapor  
7 extraction in the vicinity of Pioneer Builders Supply's  
8 property to clean up contaminated subsurface soil and  
9 groundwater to below cleanup levels identified in  
10 Table 9-4 of the ROD. During RD, the Settling  
11 Defendants may propose alternative cleanup methods that  
12 will also be protective of human health and the  
13 environment. These methods will be subject to EPA  
14 evaluation and approval.

15 • Evaluate the need for RD at Pioneer Builders Supply's  
16 property based on data collected from the existing  
17 monitoring well at Pioneer Builders Supply's property  
18 and the 3 additional wells described above.

19 • Develop a plan for implementing and implement  
20 institutional controls as required by Section VII of  
21 the SOW to prohibit drinking water use of contaminated  
22 groundwater that is above clean up levels and restrict  
23 land use.

- If necessary, conduct monitoring for evaluation of the treatment system, compliance with cleanup levels, and to assess whether additional actions will be required.

iii. Tacoma Public Utilities City Light Dry Wells.

- Excavate all soil from dry wells identified during the RI with PCB concentrations above 50 ppm or endrin concentrations above 0.13 ppm and transport the soil off-Site for incineration.
- Excavate all soil from dry wells with PCB, PAH and other chemical concentrations above the MTCA Method B residential cleanup levels and transport these soils to an off-Site permitted hazardous waste landfill for disposal.
- Conduct confirmation sampling to determine that compliance with MTCA Method B residential cleanup levels have been achieved.
- Backfill the dry wells with clean soil and install catch basins if necessary.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Paragraph 66 of Section XIX (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

1           d.     Settling Defendants shall implement any work  
2 required by any modifications incorporated in the SOW and/or in  
3 work plans developed pursuant to the SOW in accordance with this  
4 Paragraph.

5           e.     Nothing in this Paragraph shall be construed to  
6 limit EPA's authority to require performance of further response  
7 actions as otherwise provided in this Consent Decree.

8           15.    Settling Defendants acknowledge and agree that  
9 nothing in this Consent Decree, the SOW, or the Remedial Design  
10 or Remedial Action Work Plans constitutes a warranty or  
11 representation of any kind by Plaintiff that compliance with the  
12 work requirements set forth in the SOW and the Work Plans will  
13 achieve the Performance Standards.

14           16.    Settling Defendants shall, prior to any off-Site  
15 shipment of Waste Material from the Site to an out-of-state waste  
16 management facility, provide written notification to the  
17 appropriate state environmental official in the receiving  
18 facility's state and to the EPA Project Coordinator of such  
19 shipment of Waste Material. However, this notification  
20 requirement shall not apply to any off-Site shipments when the  
21 total volume of all such shipments will not exceed 10 cubic  
22 yards.

23           a.     The Settling Defendants shall include in the  
24 written notification the following information, where available:

25     (1) the name and location of the facility to which the Waste  
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1 Material is to be shipped; (2) the type and quantity of the Waste  
2 Material to be shipped; (3) the expected schedule for the  
3 shipment of the Waste Material; and (4) the method of  
4 transportation. The Settling Defendants shall notify the state  
5 in which the planned receiving facility is located of major  
6 changes in the shipment plan, such as a decision to ship the  
7 Waste Material to another facility within the same state, or to a  
8 facility in another state.

9       b. The identity of the receiving facility and state  
10 will be determined by the Settling Defendants following the award  
11 of the contract for Remedial Action construction. The Settling  
12 Defendants shall provide the information required by  
13 Paragraph 15(a) as soon as practicable after the award of the  
14 contract and before the Waste Material is actually shipped.

#### 15                   VII. REMEDY REVIEW

16       17. Periodic Review. Settling Defendants shall  
17 conduct any studies and investigations as requested by EPA, in  
18 order to permit EPA to conduct reviews of whether the Remedial  
19 Action is protective of human health and the environment at least  
20 every 5 years as required by Section 121(c) of CERCLA, 42 U.S.C.  
21 § 9621(c), and any applicable regulations.

22       18. EPA Selection of Further Response Actions. If EPA  
23 determines, at any time, that the Remedial Action is not  
24 protective of human health and the environment, EPA may select  
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1 further response actions for the Site in accordance with the  
2 requirements of CERCLA and the NCP.

3 19. Opportunity To Comment. Settling Defendants and,  
4 if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C.  
5 §§ 9613(k)(2) or 9617, the public, will be provided with an  
6 opportunity to comment on any further response actions proposed  
7 by EPA as a result of the review conducted pursuant to Section  
8 121(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written  
9 comments for the record during the comment period.

10 20. Settling Defendants' Obligation To Perform Further  
11 Response Actions. If EPA selects further response actions for  
12 the Site, the Settling Defendants shall undertake such further  
13 response actions with respect to the Work they are obligated to  
14 perform under Paragraph 6(b) of this Consent Decree to the extent  
15 that the reopener conditions in Paragraph 81 or Paragraph 82  
16 (United States' Reservations of Liability Based on Unknown  
17 Conditions or New Information) are satisfied. Settling  
18 Defendants may invoke the procedures set forth in Section XIX  
19 (Dispute Resolution) to dispute (1) EPA's determination that the  
20 reopener conditions of Paragraph 81 or Paragraph 82 of  
21 Section XXI (Covenants Not To Sue by Plaintiff) are satisfied,  
22 (2) EPA's determination that the Remedial Action is not  
23 protective of human health and the environment, or (3) EPA's  
24 selection of the further response actions. Disputes pertaining  
25 to whether the Remedial Action is protective or to EPA's  
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1 selection of further response actions shall be resolved pursuant  
2 to Paragraph 66.

3       21. Submissions of Plans. If Settling Defendants are  
4 required to perform the further response actions pursuant to  
5 Paragraph 20, they shall submit a plan for such work to EPA for  
6 approval in accordance with the procedures set forth in  
7 Section VI (Performance of the Work by Settling Defendants) and  
8 shall implement the plan approved by EPA in accordance with the  
9 provisions of this Decree.

10       VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

11       22. Settling Defendants shall use quality assurance,  
12 quality control, and chain of custody procedures for all  
13 treatability, design, compliance, and monitoring samples in  
14 accordance with "EPA Requirements for Quality Assurance Project  
15 Plans for Environmental Data Operation," (EPA QA/R5; "Preparing  
16 Perfect Project Plans," (EPA /6009-88/087)), and subsequent  
17 amendments to such guidelines upon notification by EPA to  
18 Settling Defendants of such amendment. Amended guidelines shall  
19 apply only to procedures conducted after such notification.  
20 Prior to the commencement of any monitoring project under this  
21 Consent Decree, Settling Defendants shall submit to EPA for  
22 approval a Quality Assurance Project Plan ("QAPP") that is  
23 consistent with the SOW, the NCP, and applicable guidance  
24 documents. If relevant to the proceeding, the Parties agree that  
25 validated sampling data generated in accordance with the QAPP(s)

1 and reviewed and approved by EPA shall be admissible as evidence,  
2 without objection, in any proceeding under this Decree. Settling  
3 Defendants shall ensure that EPA personnel and its authorized  
4 representatives are allowed access at reasonable times to all  
5 laboratories utilized by Settling Defendants in implementing this  
6 Consent Decree. In addition, Settling Defendants shall ensure  
7 that such laboratories shall analyze all samples submitted by EPA  
8 pursuant to the QAPP for quality assurance monitoring. Settling  
9 Defendants shall ensure that the laboratories they utilize for  
10 the analysis of samples taken pursuant to this Decree perform all  
11 analyses according to accepted EPA methods. Accepted EPA methods  
12 consist of those methods which are documented in the "Contract  
13 Lab Program Statement of Work for Inorganic Analysis" (ILM 03.1)  
14 and the "Contract Lab Program Statement of Work for Organic  
15 Analysis," (OLM 03.1) and any amendments made thereto during the  
16 course of the implementation of this Decree or other EPA approved  
17 methods. Settling Defendants shall ensure that all laboratories  
18 they use for analysis of samples taken pursuant to this Consent  
19 Decree participate in an EPA or EPA-equivalent QA/QC program.  
20 Settling Defendants shall ensure that all field methodologies  
21 utilized in collecting samples for subsequent analysis pursuant  
22 to this Decree will be conducted in accordance with the  
23 procedures set forth in the QAPP approved by EPA.

24 23. Upon request, the Settling Defendants shall allow  
25 split or duplicate samples to be taken by EPA or EPA's authorized  
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1 representatives. Settling Defendants shall notify EPA not less  
2 than 28 days in advance of any sample collection activity unless  
3 shorter notice is agreed to by EPA. In addition, EPA shall have  
4 the right to take any additional samples that EPA deems .  
5 necessary. Unless it interferes with EPA's sampling activities,  
6 EPA shall notify Settling Defendants not less than 7 days in  
7 advance of any sample collection activity. Upon request, EPA  
8 shall allow the Settling Defendants to take split or duplicate  
9 samples of any samples it takes as part of the Plaintiff's  
10 oversight of the Settling Defendants' implementation of the Work.

11 24. Settling Defendants shall submit to EPA copies of  
12 the results of all sampling and/or tests or other data obtained  
13 or generated by or on behalf of Settling Defendants with respect  
14 to the Site and/or the implementation of this Consent Decree  
15 unless EPA agrees otherwise. EPA shall submit to Settling  
16 Defendants copies of all non-privileged QA/QC results of all  
17 sampling and/or tests or other data obtained or generated by or  
18 on behalf of EPA with respect to the implementation of this  
19 Consent Decree unless the Settling Defendants agree otherwise.

20 25. Notwithstanding any provision of this Consent  
21 Decree, the United States hereby retains all of its information  
22 gathering and inspection authorities and rights, including  
23 enforcement actions related thereto, under CERCLA, RCRA, and any  
24 other applicable statutes or regulations.

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1                   IX. ACCESS AND INSTITUTIONAL CONTROLS

2                   26. Commencing upon the date of lodging of this  
3 Consent Decree, the Settling Defendants agree to provide the  
4 United States and its representatives, including EPA and its  
5 contractors, access at all reasonable times to the Site and any  
6 other property to which access is required for the implementation  
7 of this Consent Decree, to the extent access to the property is  
8 controlled by Settling Defendants, for the purposes of conducting  
9 any activity related to this Consent Decree including, but not  
10 limited to:

- 11                   a. Monitoring the Work;  
12                   b. Verifying any data or information submitted to the  
13                   United States;  
14                   c. Conducting investigations relating to  
15                   contamination at or near the Site;  
16                   d. Obtaining samples;  
17                   e. Assessing the need for planning or implementing  
18                   additional response actions at or near the Site;  
19                   f. Inspecting and copying records, operating logs,  
20                   contracts, or other documents maintained or  
21                   generated by Settling Defendants or their agents,  
22                   consistent with Section XXIV; and  
23                   g. Assessing Settling Defendants' compliance with  
24                   this Consent Decree.

25                   27. a. To the extent that the Site or any other  
26 property to which access is required for the implementation of  
27 this Consent Decree is owned or controlled by persons other than  
28 Settling Defendants, Settling Defendants shall use best efforts

1 to secure from such persons access for Settling Defendants, as  
2 well as for the United States and its representatives, including,  
3 but not limited to, their contractors, as necessary to effectuate  
4 this Consent Decree. For purposes of this Paragraph "best  
5 efforts" includes the payment of reasonable sums of money in  
6 consideration of access. If any access required to complete the  
7 Work is not obtained within 45 days of the date of lodging of  
8 this Consent Decree, or within 45 days of the date EPA notifies  
9 the Settling Defendants in writing that additional access beyond  
10 that previously secured is necessary, Settling Defendants shall  
11 promptly notify the United States, and shall include in that  
12 notification a summary of the steps Settling Defendants have  
13 taken to attempt to obtain access. The United States may, as it  
14 deems appropriate, assist Settling Defendants in obtaining  
15 access. Settling Defendants shall reimburse the United States in  
16 accordance with the procedures in Section XVI (Reimbursement of  
17 Response Costs), for all costs incurred by the United States in  
18 obtaining access which are not inconsistent with the NCP.

19 b. Owner Settling Defendants agree that in order to  
20 implement the remedial action selected in the ROD, it is  
21 appropriate and necessary to impose access obligations as set  
22 forth in Paragraph 26 of this Consent Decree and land and  
23 groundwater use restrictions, as described below, on the real  
24 property described in Appendix F. Such access obligations and  
25 use restrictions shall be binding on their transferees,

1 successors, and assigns and shall run with the land for the  
2 purpose of protecting human health and the environment by  
3 preserving in perpetuity the effectiveness of the remedial  
4 actions that have been, and will be taken at the Site.

5 c. The following use restrictions shall apply to all real  
6 property described in Appendix F ("Property") and shall be  
7 binding on Settling Defendants and their lessees, transferees,  
8 successors, and assigns who assume any title or leasehold  
9 interest in such Property:

- 10 (i) Unless approved by EPA in writing, the Property  
11 shall not be used for residential purposes.
- 12 (ii) Unless approved by EPA in writing, no action shall  
13 be taken or suffered which may (A) expose  
14 contaminated soil to the environment; or (B)  
15 disturb the integrity or effectiveness of any  
16 surface cap on the Property where the disturbance  
17 causes the release or threatened release to the  
18 environment of hazardous substances in excess of  
19 Site cleanup standards regardless of whether such  
20 cap was established as a requirement of the ROD.
- 21 (iii) Unless approved by EPA in writing, groundwater  
22 from the restricted use area of the Pioneer  
23 Builders Supply Property, as determined during  
24 Remedial Design, shall not be used as a drinking  
25 water source until groundwater cleanup levels are  
26 achieved as defined in Table 9-4 of the ROD.
- 27 (iv) At least 30 days prior to any conveyance of a  
28 title or leasehold interest in the Property, the  
owner of the Property shall give written notice of  
the access obligations and use restrictions that  
the Property is subject to and of this Consent  
Decree to the grantee and written notice to EPA of  
the proposed conveyance, including the name and  
address of the grantee, and the date on which  
notice of the Consent Decree was given to the  
grantee.



1 Each Settling Defendant retains all rights to sell, transfer, or  
2 convey any interest in the property located within the Site,  
3 subject to the restrictions and obligations set forth in this  
4 Paragraph and this Consent Decree. This Paragraph shall not  
5 prevent any Settling Defendant, or its lessees, transferees,  
6 successors, and assigns, from using the Property for industrial  
7 and commercial uses, and other non-residential uses, including  
8 those uses existing as of the date of entry of this Consent  
9 Decree, so long as such uses do not violate the restrictions  
10 described in this Paragraph.

11 d. Settling Defendants shall comply with the access  
12 obligations identified in Paragraph 26 and the use restrictions  
13 identified in Paragraph 27(c) for so long as they have an  
14 interest in any real property described in Appendix F. In  
15 addition, each Owner Settling Defendant with an ownership  
16 interest in property described in Appendix F shall prior to or  
17 upon a transfer of any title interest in such property comply  
18 with one of the following alternative requirements:

19 (i) An owner Settling Defendant conveying a title  
20 interest in real property described in Appendix F  
21 shall impose the access obligations identified in  
22 Paragraph 26 and the use restrictions identified  
23 in Paragraph 27(c) on such property by including  
24 in the instrument transferring such property the  
25 Reservation of Access Easement and Restrictions on  
26 Use set forth in Appendix G. Such Reservation of  
27 Access Easement and Restrictions on Use shall  
28 provide: (A) that the access obligations  
identified in Paragraph 26 and the use  
restrictions identified in Paragraph 27(c) are

1 restrictions on the property that is the subject  
2 of the conveyance; (B) that the parties intend the  
3 restrictions to burden the property that is the  
4 subject of the conveyance and benefit all other  
5 Property described in Appendix F; (C) that the  
6 restrictions are binding upon the subsequent  
7 transferees, successors, lessees, and assigns of  
8 the Owner Settling Defendant; (D) that the  
9 transferees, successors, lessees, and assigns of  
10 the owners of all other Property described in  
11 Appendix F shall receive the benefit of the  
12 restrictions; and (E) that the United States, as a  
third-party beneficiary of the agreement, is  
authorized, in its discretion, to enforce  
compliance with the restrictions. Within 7 days  
of the execution of the instrument conveying any  
title interest in Property described in Appendix  
F, the Owner Settling Defendant shall record such  
instrument with the Auditor's Office of Pierce  
County, Washington, or other appropriate office  
where land ownership and transfer records are  
maintained for the subject property(ies); or

(ii) Within 30 days of the effective date of this  
Consent Decree, an Owner Settling Defendant shall  
impose the access obligations identified in  
Paragraph 26 and the use restrictions identified  
in Paragraph 27(c) on its property described in  
Appendix F by granting to an Owner Settling  
Defendant with an ownership interest in property  
located at or in the vicinity of the Site an  
Environmental Protection Restrictive Covenant and  
Access Easement as described in Appendix H. Such  
an Environmental Protection Restrictive Covenant  
and Access Easement shall provide: (A) that the  
access obligations identified in Paragraph 26 and  
the use restrictions identified in Paragraph 27(c)  
are restrictions on the Owner Settling Defendant's  
property; (B) that the parties intend the  
restrictions to burden Owner Settling Defendant's  
land and benefit the other party's land; (C) that  
the restrictions are binding upon the subsequent  
transferees, successors, lessees, and assigns of  
both the Owner Settling Defendant and the other  
party; (D) that the transferees, successors,  
lessees, and assigns of the other party shall  
receive the benefit of the restrictions; and  
(E) that the United States, as a third-party  
beneficiary of the agreement, is authorized, in

1 its discretion, to enforce compliance with the  
2 restrictions. Within 7 days of executing the  
3 Environmental Protection Restrictive Covenant and  
4 Access Easement, the Owner Settling Defendant  
5 shall record the Environmental Protection  
6 Restrictive Covenant and Access Easement with the  
7 Auditor's Office of Pierce County, Washington, or  
8 other appropriate office where land ownership and  
9 transfer records are maintained for the subject  
10 property(ies).

11 In addition to the satisfying the requirements of either  
12 Paragraph 27(d)(i) or 27(d)(ii), each Owner Settling Defendant  
13 transferring any leasehold interest in real property described in  
14 Appendix F shall include in the lease transferring such a lease  
15 interest the Lease Prohibition set forth in Appendix I. Such a  
16 Lease Prohibition shall provide: (A) that the access obligations  
17 identified in Paragraph 26 and the use restrictions identified in  
18 Paragraph 27(c) are restrictions on the Owner Settling  
19 Defendant's property; (B) that the restrictions are binding upon  
20 the subsequent transferees, successors, sublessees, and assigns  
21 of both the Owner Settling Defendant and the other party; and  
22 (C) that the United States, as a third-party beneficiary of the  
23 agreement, is authorized, in its discretion, to enforce  
24 compliance with the restrictions. Within 7 days of execution of  
25 such lease, the Owner Settling Defendant shall record such lease  
26 in the Auditor's Office of Pierce County, Washington, or other  
27 appropriate office where land ownership and transfer records are  
28 maintained for the subject property(ies).

1 e. The Settling Defendants shall not be subject to  
2 penalties or subject to stipulated penalties pursuant to  
3 Section XX (Stipulated Penalties) of this Consent Decree in the  
4 event that the covenants, conditions, and restrictions described  
5 in Subparagraph 27(d)(i) or the restrictions described in  
6 Subparagraph 27(d)(ii) are determined by this Court not to run  
7 with the land or bind subsequent owners, transferees, or lessees  
8 of the property described in Appendix F. However, a Settling  
9 Defendant shall be subject to penalties or stipulated penalties  
10 pursuant to Section XX (Stipulated Penalties) should that  
11 Settling Defendant fail to comply with Paragraph 27(d).

12 f. The Parties anticipate that property described in  
13 Appendix F may be sold after the effective date of this Consent  
14 Decree. EPA will consider, subject to its nonreviewable  
15 discretion, offers to negotiate a prospective purchaser agreement  
16 with potential purchasers of such property pursuant to the  
17 prospective purchaser guidance document, "Guidance on Settlements  
18 with Prospective Purchasers of Contaminated Property," 60 Fed.  
19 Reg. 34792, or other guidance available at that time.

20 28. Notwithstanding any provision of this Consent  
21 Decree, the United States retains all of its access authorities  
22 and rights, including enforcement authorities related thereto,  
23 under CERCLA, RCRA and any other applicable statute or  
24 regulations.

1                                   X.   REPORTING REQUIREMENTS

2                   29.   In addition to any other reporting requirement of  
3 this Consent Decree, Settling Defendants shall submit to EPA  
4 copies of written monthly progress reports that: (a) describe the  
5 actions which have been taken toward achieving compliance with  
6 this Consent Decree during the previous month; (b) include a  
7 summary of all results of sampling and tests and all other data  
8 received or generated by Settling Defendants or their contractors  
9 or agents in the previous month; (c) identify all work plans,  
10 plans and other deliverables required by this Consent Decree that  
11 were completed and submitted during the previous month;  
12 (d) describe all actions, including, but not limited to, data  
13 collection and implementation of work plans, which are scheduled  
14 for the next 6 weeks and provide other information relating to  
15 the progress of construction, including, but not limited to,  
16 critical path diagrams, Gantt charts, and Pert charts;  
17 (e) include information regarding percentage of completion,  
18 unresolved delays encountered or anticipated that may affect the  
19 future schedule for implementation of the Work, and a description  
20 of efforts made to mitigate those delays or anticipated delays;  
21 (f) include any modifications to the work plans or other  
22 schedules that Settling Defendants have proposed to EPA or that  
23 have been approved by EPA; and (g) describe all activities  
24 undertaken in support of the Community Relations Plan during the  
25 previous month and those to be undertaken in the next 6 weeks.

1 Settling Defendants shall submit these progress reports to EPA by  
2 the tenth day of every month following the lodging of this  
3 Consent Decree until EPA notifies the Settling Defendants  
4 pursuant to Paragraph 49(b) of Section XIV (Certification of  
5 Completion). If requested by EPA, Settling Defendants shall also  
6 provide briefings for EPA to discuss the progress of the Work.

7 30. The Settling Defendants shall notify EPA of any  
8 change in the schedule described in the monthly progress report  
9 for the performance of any activity, including, but not limited  
10 to, data collection and implementation of work plans, no later  
11 than 7 days prior to the performance of the activity.

12 31. Upon the occurrence of any event during  
13 performance of the Work that Settling Defendants are required to  
14 report pursuant to Section 103 of CERCLA or Section 304 of the  
15 Emergency Planning and Community Right-to-Know Act ("EPCRA"),  
16 Settling Defendants shall within 24 hours of the on-set of such  
17 event orally notify the EPA Project Coordinator or the Alternate  
18 EPA Project Coordinator (in the event of the unavailability of  
19 the EPA Project Coordinator), or, in the event that neither the  
20 EPA Project Coordinator or Alternate EPA Project Coordinator is  
21 available, the Emergency Response Section, Region 10,  
22 United States Environmental Protection Agency. These reporting  
23 requirements are in addition to the reporting required by CERCLA  
24 Section 103 or EPCRA Section 304.

1           32. Within 20 days of the onset of such an event,  
2 Settling Defendants shall furnish to Plaintiff a written report,  
3 signed by the Settling Defendant's Project Coordinator, setting  
4 forth the events which occurred and the measures taken, and to be  
5 taken, in response thereto. Within 30 days of the conclusion of  
6 such an event, Settling Defendants shall submit a report setting  
7 forth all actions taken in response thereto.

8           33. Unless otherwise specifically designated within  
9 this Consent Decree or otherwise subsequently directed in writing  
10 by EPA, Settling Defendants shall submit 4 copies of all plans,  
11 reports, and data required by the SOW, the Remedial Design Work  
12 Plan, the Remedial Action Work Plan, or any other approved plans  
13 to EPA in accordance with the schedules set forth in such plans.

14           34. All reports and other documents submitted by  
15 Settling Defendants to EPA (other than the monthly progress  
16 reports referred to above) which purport to document Settling  
17 Defendants' compliance with the terms of this Consent Decree  
18 shall be signed by a representative authorized by the Settling  
19 Defendants.

20           **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

21           35. After review of any plan, report or other item  
22 which is required to be submitted for approval pursuant to this  
23 Consent Decree, EPA shall: (a) approve, in whole or in part, the  
24 submission; (b) approve the submission upon specified conditions;  
25 (c) modify the submission to cure the deficiencies;  
26

1 (d) disapprove, in whole or in part, the submission, directing  
2 that the Settling Defendants modify the submission; or (e) any  
3 combination of the above. However, EPA shall not modify a  
4 submission without first providing Settling Defendants at least  
5 one notice of deficiency and an opportunity to cure within  
6 7 days, except where to do so would cause serious disruption to  
7 the Work or where previous submission(s) have been disapproved  
8 due to material defects and the deficiencies in the submission  
9 under consideration indicate a bad faith lack of effort to submit  
10 an acceptable deliverable.

11 36. In the event of approval, approval upon  
12 conditions, or modification by EPA, pursuant to Paragraph 35(a),  
13 35(b), or 35(c), Settling Defendants shall proceed to take any  
14 action required by the plan, report, or other item, as approved  
15 or modified by EPA subject only to their right to invoke the  
16 Dispute Resolution procedures set forth in Section XIX (Dispute  
17 Resolution) with respect to the modifications or conditions made  
18 by EPA. In the event that EPA modifies the submission to cure a  
19 material deficiency pursuant to Paragraph 35(c), EPA retains its  
20 right to seek stipulated penalties, as provided in Section XX  
21 (Stipulated Penalties). In the event EPA seeks stipulated  
22 penalties under this Paragraph, Settling Defendants reserve all  
23 defenses pertaining to the imposition of such stipulated  
24 penalties including, but not limited to, Settling Defendants'



1 timely compliance with the plan, report, or other items as  
2 modified by EPA.

3 37. a. Upon receipt of a notice of disapproval  
4 pursuant to Paragraph 35(d), Settling Defendants shall, within  
5 14 days or such longer time as specified by EPA in such notice,  
6 correct the deficiencies and resubmit the plan, report, or other  
7 item for approval. Any stipulated penalties applicable to the  
8 submission, as provided in Section XX (Stipulated Penalties),  
9 shall accrue during the 14 day period or otherwise specified  
10 period but shall not be payable unless the resubmission is  
11 disapproved or modified due to a material defect as provided in  
12 Paragraphs 38 and 39.

13 b. Notwithstanding the receipt of a notice of  
14 disapproval pursuant to Paragraph 35(d), Settling Defendants  
15 shall proceed, at the direction of EPA, to take any action  
16 required by any non-deficient portion of the submission.  
17 Implementation of any non-deficient portion of a submission shall  
18 not relieve Settling Defendants of any liability for stipulated  
19 penalties under Section XX (Stipulated Penalties).

20 38. In the event that a resubmitted plan, report or  
21 other item, or portion thereof, is disapproved by EPA, EPA may  
22 again require the Settling Defendants to correct the  
23 deficiencies, in accordance with the preceding Paragraphs. EPA  
24 also retains the right to modify or develop the plan, report or  
25 other item consistent with the scope of the remedy selected in  
26

1 the ROD. Settling Defendants shall implement any such plan,  
2 report, or item as modified or developed by EPA, subject only to  
3 their right to invoke the procedures set forth in Section XIX  
4 (Dispute Resolution).

5 39. If upon resubmission, a plan, report, or item is  
6 disapproved or modified by EPA due to a material defect, Settling  
7 Defendants shall be deemed to have failed to submit such plan,  
8 report, or item timely and adequately unless the Settling  
9 Defendants invoke the dispute resolution procedures set forth in  
10 Section XIX (Dispute Resolution) and EPA's action is overturned  
11 pursuant to that Section. The provisions of Section XIX (Dispute  
12 Resolution) and Section XX (Stipulated Penalties) shall govern  
13 the implementation of the Work and accrual and payment of any  
14 stipulated penalties during Dispute Resolution. If EPA's  
15 disapproval or modification is upheld, stipulated penalties shall  
16 accrue for such violation from the date on which the initial  
17 submission was originally required, as provided in Section XX  
18 (Stipulated Penalties).

19 40. All plans, reports, and other items required to be  
20 submitted to EPA under this Consent Decree shall, upon approval  
21 or modification by EPA, be enforceable under this Consent Decree.  
22 In the event EPA approves or modifies a portion of a plan,  
23 report, or other item required to be submitted to EPA under this  
24 Consent Decree, the approved or modified portion shall be  
25 enforceable under this Consent Decree.

1                                   XII.   PROJECT COORDINATORS

2           41.   Within 20 days of entry of this Consent Decree,  
3   Settling Defendants and EPA will notify each other, in writing,  
4   of the name, address and telephone number of their respective  
5   designated Project Coordinators and Alternate Project  
6   Coordinators.  If a Project Coordinator or Alternate Project  
7   Coordinator initially designated is changed, the identity of the  
8   successor will be given to the other Parties at least 5 working  
9   days before the change occurs, unless impracticable, but in no  
10   event later than the actual day the change is made.  The Settling  
11   Defendants' Project Coordinator shall be subject to disapproval  
12   by EPA and shall have the technical expertise sufficient to  
13   adequately oversee all aspects of the Work.  The Settling  
14   Defendants' Project Coordinator shall not be an attorney for any  
15   of the Settling Defendants in this matter.  He or she may assign  
16   other representatives, including other contractors, to serve as a  
17   Site representative for oversight of performance of daily  
18   operations during remedial activities.

19           42.  Plaintiff may designate other representatives,  
20   including, but not limited to, EPA employees and federal  
21   contractors and consultants, to observe and monitor the progress  
22   of any activity undertaken pursuant to this Consent Decree.  
23   EPA's Project Coordinator and Alternate Project Coordinator shall  
24   have the authority lawfully vested in a Remedial Project Manager  
25   ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R.

1 Part 300. In addition, EPA's Project Coordinator or Alternate  
2 Project Coordinator shall have authority, consistent with the  
3 National Contingency Plan, to halt any Work required by this  
4 Consent Decree and to take any necessary response action when he  
5 or she determines that conditions at the Site constitute an  
6 emergency situation or may present an immediate threat to public  
7 health or welfare or the environment due to release or threatened  
8 release of Waste Material.

9 43. EPA's Project Coordinator and the Settling  
10 Defendants' Project Coordinator will meet on a monthly basis or  
11 as otherwise agreed.

12 **XIII. ASSURANCE OF ABILITY TO COMPLETE WORK**

13 44. Within 30 days of entry of this Consent Decree,  
14 each Settling Defendant or groups of Settling Defendants shall,  
15 consistent with the liability obligations described in Appendix  
16 F, establish and maintain financial security in the combined  
17 total amount of \$17,300,000 in one or more of the following  
18 forms:

- 19 (a) A surety bond guaranteeing performance of the  
20 Work;  
21 (b) One or more irrevocable letters of credit  
22 equalling the total estimated cost of the Work;  
23 (c) A trust fund;  
24 (d) A guarantee to perform the Work by one or more  
25 parent corporations or subsidiaries, or by one or  
26 more unrelated corporations that have a  
27 substantial business relationship with at least  
28 one of the Settling Defendants;

1 (e) A demonstration that one or more of the Settling  
2 Defendants satisfy the requirements of 40 C.F.R.  
Part 264.143(f).

3 45. If the Settling Defendants seek to demonstrate the  
4 ability to complete the Work through a guarantee by a third party  
5 pursuant to Paragraph 44(d) of this Consent Decree, Settling  
6 Defendants shall demonstrate that the guarantor satisfies the  
7 requirements of 40 C.F.R. Part 264.143(f). If Settling  
8 Defendants seek to demonstrate their ability to complete the Work  
9 by means of the financial test or the corporate guarantee  
10 pursuant to Paragraph 44(d) or 44(e), they shall resubmit sworn  
11 statements conveying the information required by 40 C.F.R. Part  
12 264.143(f) annually, on the anniversary of the effective date of  
13 this Consent Decree or on such other annual date approved by EPA.  
14 In the event that EPA determines at any time that the financial  
15 assurances provided pursuant to this Section are inadequate,  
16 Settling Defendants shall, within 30 days of receipt of notice of  
17 EPA's determination, obtain and present to EPA for approval one  
18 of the other forms of financial assurance listed in Paragraph 44  
19 of this Consent Decree. Settling Defendants' inability to  
20 demonstrate financial ability to complete the Work shall not  
21 excuse performance of any activities required under this Consent  
22 Decree.

23 46. If Settling Defendants can show that the estimated  
24 cost to complete the remaining Work has diminished below the  
25 amount set forth in Paragraph 44 after entry of this Consent  
26

27 UNITED STATES ATTORNEY  
3600 SEAFIRST FIFTH AVENUE PLAZA  
800 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 553-7970

1 Decree, Settling Defendants shall be permitted, on any  
2 anniversary date of entry of this Consent Decree, or at any other  
3 time agreed to by the Parties, to reduce the amount of the  
4 financial security provided under this Section to the estimated  
5 cost of the remaining work to be performed. Settling Defendants  
6 shall submit a proposal for such reduction to EPA, in accordance  
7 with the requirements of this Section, and may reduce the amount  
8 of the security upon approval by EPA. In the event of a dispute,  
9 Settling Defendants may invoke the dispute resolution procedures  
10 of Section XIX (Dispute Resolution). Settling Defendants may  
11 reduce the amount of the security in accordance with the final  
12 administrative or judicial decision resolving the dispute.

13 47. Settling Defendants may change the form of  
14 financial assurance provided under this Section at any time, upon  
15 notice to and approval by EPA, provided that the new form of  
16 assurance meets the requirements of this Section. In the event  
17 of a dispute, Settling Defendants may invoke the dispute  
18 resolution procedures of Section XIX (Dispute Resolution).  
19 Settling Defendants may change the form of the financial  
20 assurance only in accordance with the final administrative or  
21 judicial decision resolving the dispute.

#### 22 XIV. CERTIFICATION OF COMPLETION

##### 23 48. Completion of Remedial Action.

24 a. Within ninety (90) days after Settling Defendants  
25 conclude that the Remedial Action or any portion thereof as set  
26

1 forth in Appendix F has been fully performed and the Performance  
2 Standards have been attained. Settling Defendants shall schedule  
3 and conduct a pre-certification inspection to be attended by  
4 Settling Defendants and EPA. If, after the pre-certification  
5 inspection, the Settling Defendants still believe that the  
6 Remedial Action has been fully performed and the Performance  
7 Standards have been attained, they shall submit a written report  
8 requesting certification to EPA for approval pursuant to  
9 Section XI (EPA Approval of Plans and Other Submissions) within  
10 thirty (30) days of the inspection. In the report, a registered  
11 professional engineer and the Settling Defendants' Project  
12 Coordinator shall state that the Remedial Action has been  
13 completed in full satisfaction of the requirements of this  
14 Consent Decree. The written report shall include as-built  
15 drawings signed and stamped by a professional engineer. The  
16 report shall contain the following statement, signed by a  
17 responsible corporate official of a Settling Defendant or the  
18 Settling Defendants' Project Coordinator:

19 "To the best of my knowledge, after thorough  
20 investigation, I certify that the information contained  
21 in or accompanying this submission is true, accurate  
22 and complete. I am aware that there are significant  
penalties for submitting false information, including  
the possibility of fine and imprisonment for knowing  
violations."

23 If, after completion of the pre-certification inspection and  
24 receipt and review of the written report, EPA determines that the  
25 Remedial Action or any portion thereof has not been completed in  
26

1 accordance with this Consent Decree or that the Performance  
2 Standards have not been achieved, EPA will notify Settling  
3 Defendants, in writing, of the activities that must be undertaken  
4 by Settling Defendants pursuant to this Consent Decree to  
5 complete the Remedial Action and achieve the Performance  
6 Standards. Provided, however, that EPA may only require Settling  
7 Defendants to perform such activities pursuant to this Paragraph  
8 to the extent that such activities are consistent with the "scope  
9 of the remedy selected in the ROD," as that term is defined in  
10 Paragraph 14(b). EPA will set forth in the notice a schedule for  
11 performance of such activities consistent with the Consent Decree  
12 and the SOW or require the Settling Defendants to submit a  
13 schedule to EPA for approval pursuant to Section XI (EPA Approval  
14 of Plans and Other Submissions). Settling Defendants shall  
15 perform all activities described in the notice in accordance with  
16 the specifications and schedules established pursuant to this  
17 Paragraph, subject to their right to invoke the dispute  
18 resolution procedures set forth in Section XIX (Dispute  
19 Resolution).

20         b. If EPA concludes, based on the initial or any  
21 subsequent report requesting Certification of Completion that the  
22 Remedial Action has been performed in accordance with this  
23 Consent Decree and that the Performance Standards have been  
24 achieved, EPA will so certify, in writing, to Settling  
25 Defendants. This certification shall constitute the  
26  
27



1 Certification of Completion of the Remedial Action for purposes  
2 of this Consent Decree, including, but not limited to, Section  
3 XXI (Covenants Not to Sue by Plaintiff). Certification of  
4 Completion of the Remedial Action shall not affect Settling  
5 Defendants' obligations under this Consent Decree.

6 49. Completion of the Work.

7 a. Within ninety (90) days after Settling Defendants  
8 conclude that all phases of the Work (including O & M), have been  
9 fully performed, Settling Defendants shall schedule and conduct a  
10 pre-certification inspection to be attended by Settling  
11 Defendants and EPA. If, after the pre-certification inspection,  
12 the Settling Defendants still believe that the Work has been  
13 fully performed, Settling Defendants shall submit a written  
14 report by a registered professional engineer stating that the  
15 Work has been completed in full satisfaction of the requirements  
16 of this Consent Decree. The report shall contain the following  
17 statement, signed by a responsible corporate official of a  
18 Settling Defendant or the Settling Defendants' Project  
19 Coordinator:

20 "To the best of my knowledge, after thorough  
21 investigation, I certify that the information contained  
22 in or accompanying this submission is true, accurate  
23 and complete. I am aware that there are significant  
penalties for submitting false information, including  
the possibility of fine and imprisonment for knowing  
violations."

24 If, after review of the written report, EPA determines that any  
25 portion of the Work has not been completed in accordance with  
26

1 this Consent Decree, EPA will notify Settling Defendants, in  
2 writing, of the activities that must be undertaken by Settling  
3 Defendants pursuant to this Consent Decree to complete the Work.  
4 Provided, however, that EPA may only require Settling Defendants  
5 to perform such activities pursuant to this Paragraph to the  
6 extent that such activities are consistent with the "scope of the  
7 remedy selected in the ROD," as that term is defined in  
8 Paragraph 14(b). EPA will set forth in the notice a schedule  
9 for performance of such activities consistent with the Consent  
10 Decree and the SOW or require the Settling Defendants to submit a  
11 schedule to EPA for approval pursuant to Section XI (EPA Approval  
12 of Plans and Other Submissions). Settling Defendants shall  
13 perform all activities described in the notice in accordance with  
14 the specifications and schedules established therein, subject to  
15 their right to invoke the dispute resolution procedures set forth  
16 in Section XIX (Dispute Resolution).

17       b. If EPA concludes, based on the initial or any  
18 subsequent request for Certification of Completion by Settling  
19 Defendants that the Work has been performed in accordance with  
20 this Consent Decree, EPA will so notify the Settling Defendants,  
21 in writing.

#### 22                   XV. EMERGENCY RESPONSE

23       50. In the event of any action or occurrence during  
24 the performance of the Work which causes or threatens a release  
25 of Waste Material from the Site that constitutes an emergency  
26

1 situation or may present an immediate threat to public health or  
2 welfare or the environment, Settling Defendants shall, subject to  
3 Paragraph 51, immediately take all appropriate action to prevent,  
4 abate, or minimize such release or threat of release, and shall  
5 immediately notify the EPA's Project Coordinator, or, if the  
6 Project Coordinator is unavailable, EPA's Alternate Project  
7 Coordinator. If neither of these persons is available, the  
8 Settling Defendants shall notify the EPA Emergency Response Unit,  
9 Region 10. Settling Defendants shall take such actions in  
10 consultation with EPA's Project Coordinator or other available  
11 authorized EPA officer and in accordance with all applicable  
12 provisions of the Health and Safety Plans, the Contingency Plans,  
13 and any other applicable plans or documents developed pursuant to  
14 the SOW. In the event that Settling Defendants fail to take  
15 appropriate response action as required by this Section, and EPA  
16 takes such action instead, Settling Defendants shall reimburse  
17 EPA for all costs of the response action not inconsistent with  
18 the NCP pursuant to Section XVI (Reimbursement of Response  
19 Costs). The EPA shall provide notice, if practicable, to the  
20 Settling Defendants prior to taking such action.

21 51. Subject to Section XXI (Covenants Not to Sue by  
22 Plaintiff), nothing in the preceding Paragraph or in this Consent  
23 Decree shall be deemed to limit any authority of the United  
24 States (a) to take all appropriate action to protect human health  
25 and the environment or to prevent, abate, respond to, or minimize  
26

1 an actual or threatened release of Waste Material on, at, or from  
2 the Site, or (b) to direct or order such action, or seek an order  
3 from the Court, to protect human health and the environment or to  
4 prevent, abate, respond to, or minimize an actual or threatened  
5 release of Waste Material on, at, or from the Site.

6 XVI. REIMBURSEMENT OF RESPONSE COSTS

7 52. Within 30 days of the effective date of this  
8 Consent Decree, Settling Defendants shall pay to the EPA  
9 Hazardous Substance Superfund two million dollars (\$2,000,000.00)  
10 plus Interest on that amount accruing from March 11, 1996 until  
11 the date of payment, in reimbursement of EPA's claims for Past  
12 Response Costs, by FedWire Electronic Funds Transfer ("EFT" or  
13 wire transfer) to the U.S. Department of Justice ("DOJ") account  
14 in accordance with current electronic funds transfer procedures,  
15 referencing U.S.A.O. file number 9601166, the EPA Region and  
16 Site/Spill ID #10Y7, and DOJ case number 90-11-3-1516. Payment  
17 shall be made in accordance with instructions provided to the  
18 Settling Defendants by the Financial Litigation Unit of the  
19 United States Attorney's Office for the Western District of  
20 Washington following entry of the Consent Decree. Any payments  
21 received by the DOJ after 4:00 P.M. (Eastern Time) will be  
22 credited on the next business day. Settling Defendants shall  
23 send notice that such payment has been made to the United States  
24 as specified in Section XXVI (Notices and Submissions) and Joe  
25  
26  
27

1 Penwell, U.S. EPA, Region 10, 1200 Sixth Avenue, MD-149, Seattle,  
2 WA 98101.

3 53. Settling Defendants shall reimburse the EPA  
4 Hazardous Substance Superfund for all Future Response Costs not  
5 inconsistent with the National Contingency Plan in accordance  
6 with Appendix F. Subject to the Anti-Deficiency Act, 31 U.S.C.  
7 § 1341, EPA shall perform all oversight of the Work using EPA  
8 staff only, except that EPA may hire outside contractors to  
9 perform a maximum of \$105,000 in oversight of the Work. The  
10 United States will send Settling Defendants a bill requiring  
11 payment in accordance with Appendix F that includes a Superfund  
12 Costs Organization Enhancement System ("SCORES") report which  
13 includes direct and indirect costs incurred by EPA and its  
14 contractors and any applicable DOJ-prepared cost summary  
15 reflecting costs incurred by DOJ and its contractors, if any, on  
16 a periodic basis. Settling Defendants shall make all payments  
17 within 30 days of Settling Defendants' receipt of each bill  
18 requiring payment, except as otherwise provided in Paragraph 54.  
19 The Settling Defendants shall make all payments required by this  
20 Paragraph in the form of a certified or cashier's check or checks  
21 made payable to "EPA Hazardous Substance Superfund" and  
22 referencing the EPA Region and Site/Spill ID #10Y7, the DOJ case  
23 number 90-11-3-1516, and the name and address of the party making  
24 payment. The Settling Defendants shall send the check(s) to  
25 Mellon Bank, EPA Region 10, ATTN: Superfund Accounting, P.O.

Box 360903M, Pittsburgh, Pennsylvania 15251 and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and Joe Penwell, U.S. EPA, Region 10, 1200 Sixth Avenue, MD-149, Seattle, WA 98101

54. Settling Defendants may object to payment of any Future Response Costs under Paragraph 53 if they determine that the United States has made an accounting error, or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 53. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Washington and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not

1 limited to, information containing the identity of the bank and  
2 bank account under which the escrow account is established as  
3 well as a bank statement showing the initial balance of the  
4 escrow account. Simultaneously with establishment of the escrow  
5 account, the Settling Defendants shall initiate the Dispute  
6 Resolution procedures in Section XIX (Dispute Resolution). If  
7 the United States prevails in the dispute, within 5 days of the  
8 resolution of the dispute, the Settling Defendants shall pay the  
9 sums due (plus accrued Interest) to the United States in the  
10 manner described in Paragraph 53. If the Settling Defendants  
11 prevail concerning any aspect of the contested costs, the  
12 Settling Defendants shall pay that portion of the costs (plus  
13 accrued Interest) for which they did not prevail to the United  
14 States in the manner described in Paragraph 53; Settling  
15 Defendants shall be disbursed any balance of the escrow account.  
16 The dispute resolution procedures set forth in this Paragraph in  
17 conjunction with the procedures set forth in Section XIX (Dispute  
18 Resolution) shall be the exclusive mechanisms for resolving  
19 disputes regarding the Settling Defendants' obligation to  
20 reimburse the United States for its Future Response Costs.

21           55. In the event that the payments required by  
22 Paragraph 52 are not made within 30 days of the effective date of  
23 this Consent Decree or the payments required by Paragraph 53 are  
24 not made within 30 days of the Settling Defendants' receipt of  
25 the bill, Settling Defendants shall pay Interest on the unpaid  
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1 balance. The Interest to be paid on Past Response Costs under  
2 this Paragraph shall begin to accrue 30 days after the effective  
3 date of this Consent Decree. The Interest on Future Response  
4 Costs shall begin to accrue on the date of the bill. Interest  
5 shall accrue through the date of the Settling Defendants'  
6 payment. Payments of Interest made under this Paragraph shall be  
7 in addition to such other remedies or sanctions available to  
8 Plaintiff under Sections XX (Stipulated Penalties) and XXI  
9 (Covenants Not to Sue by Plaintiff). The Settling Defendants  
10 shall make all payments required by this Paragraph in the manner  
11 described in Paragraph 53.

12 XVII. INDEMNIFICATION AND INSURANCE

13 56. a. The United States does not assume any  
14 liability by entering into this agreement or by virtue of any  
15 designation of Settling Defendants as EPA's authorized  
16 representatives under Section 104(e) of CERCLA, 42 U.S.C.  
17 § 9604(e). Settling Defendants shall indemnify, save and hold  
18 harmless the United States and its officials, agents, employees,  
19 contractors, subcontractors, or representatives for or from any  
20 and all claims or causes of action arising from, or on account  
21 of, negligent or other wrongful acts or omissions of Settling  
22 Defendants, their officers, directors, employees, agents,  
23 contractors, subcontractors, and any persons acting on their  
24 behalf or under their control, in carrying out activities  
25 pursuant to this Consent Decree, including, but not limited to,



1 any claims arising from any designation of Settling Defendants as  
2 EPA's authorized representatives under Section 104(e) of CERCLA,  
3 42 U.S.C. § 9604(e). Further, the Settling Defendants agree to  
4 pay the United States all costs it incurs including, but not  
5 limited to, attorneys fees and other expenses of litigation and  
6 settlement arising from, or on account of, claims made against  
7 the United States based on negligent or other wrongful acts or  
8 omissions of Settling Defendants, their officers, directors,  
9 employees, agents, contractors, subcontractors, and any persons  
10 acting on their behalf or under their control, in carrying out  
11 activities pursuant to this Consent Decree. The United States  
12 shall not be held out as a party to any contract entered into by  
13 or on behalf of Settling Defendants in carrying out activities  
14 pursuant to this Consent Decree. Neither the Settling Defendants  
15 nor any such contractor shall be considered an agent of the  
16 United States. The indemnification required by this Paragraph  
17 shall be the joint and several obligation of the Settling  
18 Defendant(s) upon whose behalf the Work was performed, as  
19 specified in Appendix F.

20       b. The United States shall give Settling Defendants  
21 notice of any claim for which the United States plans to seek  
22 indemnification pursuant to Paragraph 56(a), and shall consult  
23 with Settling Defendants prior to settling such claim.

24       c. The Settling Defendants reserve, do not waive, and  
25 expressly do not indemnify, save, and hold harmless the  
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1 United States from any and all claims reserved under  
2 Paragraph 88.

3 57. Settling Defendants waive all claims against the  
4 United States for damages or reimbursement or for set-off of any  
5 payments made or to be made to the United States, arising from or  
6 on account of any contract, agreement, or arrangement between any  
7 one or more of Settling Defendants and any person for performance  
8 of Work on or relating to the Site, including, but not limited  
9 to, claims on account of construction delays. In addition,  
10 Settling Defendants shall indemnify and hold harmless the  
11 United States with respect to any and all claims for damages or  
12 reimbursement arising from or on account of any contract,  
13 agreement, or arrangement between any one or more of Settling  
14 Defendants and any person for performance of Work on or relating  
15 to the Site, including, but not limited to, claims on account of  
16 construction delays. The indemnity obligation required by this  
17 Paragraph shall be the joint and several obligation of the  
18 Settling Defendant(s) upon whose behalf the Work was performed,  
19 as specified in Appendix F.

20 58. No later than 15 days before commencing any on-  
21 Site Work, Settling Defendants shall secure and maintain, or  
22 shall have their contractors or subcontractors secure and  
23 maintain, until the first anniversary of EPA's Certification of  
24 Completion of the Remedial Action pursuant to Paragraph 48(b) of  
25 Section XIV (Certification of Completion), comprehensive general  
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1 liability insurance with limits of five million dollars  
2 (\$5,000,000.00), combined single limit, and automobile liability  
3 insurance with limits of one million dollars (\$1,000,000.00),  
4 combined single limit, naming the United States or the EPA on  
5 behalf of the United States as an additional insured. In  
6 addition, for the duration of this Consent Decree, Settling  
7 Defendants shall satisfy, or shall ensure that their contractors  
8 or subcontractors satisfy, all applicable laws and regulations  
9 regarding the provision of worker's compensation insurance for  
10 all persons performing the Work on behalf of Settling Defendants  
11 in furtherance of this Consent Decree. Prior to commencement of  
12 the Work under this Consent Decree, Settling Defendants shall  
13 provide to EPA certificates of such insurance and a copy of each  
14 insurance policy. Settling Defendants shall resubmit such  
15 certificates and copies of policies each year on the anniversary  
16 of the effective date of this Consent Decree. If Settling  
17 Defendants demonstrate by evidence satisfactory to EPA that any  
18 contractor or subcontractor maintains insurance equivalent to  
19 that described above, or insurance covering the same risks but in  
20 a lesser amount, then, with respect to that contractor or  
21 subcontractor, Settling Defendants need provide only that portion  
22 of the insurance described above which is not maintained by the  
23 contractor or subcontractor.

1 XVIII. FORCE MAJEURE

2 59. "Force Majeure," for purposes of this Consent  
3 Decree, is defined as any event arising from causes beyond the  
4 control of the Settling Defendants, of any entity controlled by  
5 Settling Defendants, or of Settling Defendants' contractors, that  
6 delays or prevents the performance of any obligation under this  
7 Consent Decree despite Settling Defendants' best efforts to  
8 fulfill the obligation. The requirement that the Settling  
9 Defendants exercise "best efforts to fulfill the obligation"  
10 includes using best efforts to anticipate any potential force  
11 majeure event and best efforts to address the effects of any  
12 potential force majeure event (1) as it is occurring, and  
13 (2) following the potential force majeure event, such that the  
14 delay is minimized to the greatest extent possible. "Force  
15 Majeure" does not include financial inability to complete the  
16 Work or a failure to attain the Performance Standards.

17 60. If any event occurs or has occurred that may delay  
18 the performance of any obligation under this Consent Decree,  
19 whether or not caused by a force majeure event, the Settling  
20 Defendants shall notify orally EPA's Project Coordinator or, in  
21 his or her absence, EPA's Alternate Project Coordinator or, in  
22 the event both of EPA's designated representatives are  
23 unavailable, the Director of the Office of Environmental Cleanup,  
24 EPA Region 10, within 48 hours of when Settling Defendants first  
25 knew that the event might cause a delay. Within 7 days

1 thereafter, Settling Defendants shall provide in writing to EPA  
2 an explanation and description of the reasons for the delay; the  
3 anticipated duration of the delay; all actions taken or to be  
4 taken to prevent or minimize the delay; a schedule for  
5 implementation of any measures to be taken to prevent or mitigate  
6 the delay or the effect of the delay; the Settling Defendants'  
7 rationale for attributing such delay to a force majeure event if  
8 they intend to assert such a claim; and a statement as to  
9 whether, in the opinion of the Settling Defendants, such event  
10 may cause or contribute to an endangerment to public health,  
11 welfare or the environment. The Settling Defendants shall  
12 include with any notice all available documentation supporting  
13 their claim that the delay was attributable to a force majeure.  
14 Failure to comply with the above requirements shall preclude  
15 Settling Defendants from asserting any claim of force majeure for  
16 that event for the period of time of such failure to comply and  
17 for any additional delay caused by such failure. Settling  
18 Defendants shall be deemed to know of any circumstance of which  
19 Settling Defendants, any entity controlled by Settling  
20 Defendants, or Settling Defendants' contractors knew or should  
21 have known.

22 61. If EPA agrees that the delay or anticipated delay  
23 is attributable to a force majeure event, the time for  
24 performance of the obligations under this Consent Decree that are  
25 affected by the force majeure event will be extended by EPA for  
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1 such time as is necessary to complete those obligations. An  
2 extension of the time for performance of the obligations affected  
3 by the force majeure event shall not, of itself, extend the time  
4 for performance of any other obligation. If EPA does not agree  
5 that the delay or anticipated delay has been or will be caused by  
6 a force majeure event, EPA will notify the Settling Defendants in  
7 writing of its decision. If EPA agrees that the delay is  
8 attributable to a force majeure event, EPA will notify the  
9 Settling Defendants, in writing, of the length of the extension,  
10 if any, for performance of the obligations affected by the force  
11 majeure event.

12           62. If the Settling Defendants elect to invoke the  
13 dispute resolution procedures set forth in Section XIX (Dispute  
14 Resolution), they shall do so no later than 15 days after receipt  
15 of EPA's notice. In any such proceeding, Settling Defendants  
16 shall have the burden of demonstrating by a preponderance of the  
17 evidence that the delay or anticipated delay has been or will be  
18 caused by a force majeure event, that the duration of the delay  
19 or the extension sought was or will be warranted under the  
20 circumstances, that best efforts were exercised to avoid and  
21 mitigate the effects of the delay, and that Settling Defendants  
22 complied with the requirements of Paragraphs 59 and 60. If  
23 Settling Defendants carry this burden, the delay at issue shall  
24 be deemed not to be a violation by Settling Defendants of the  
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1 affected obligation of this Consent Decree identified to EPA and  
2 the Court.

3           XIX. DISPUTE RESOLUTION

4           63. Unless otherwise expressly provided for in this  
5 Consent Decree, the dispute resolution procedures of this Section  
6 shall be the exclusive mechanism to resolve disputes arising  
7 under or with respect to this Consent Decree. However, the  
8 procedures set forth in this Section shall not apply to actions  
9 by the United States to enforce obligations of the Settling  
10 Defendants that have not been disputed in accordance with this  
11 Section.

12           64. Any dispute which arises under or with respect to  
13 this Consent Decree shall in the first instance be the subject of  
14 informal negotiations between the parties to the dispute. The  
15 period for informal negotiations shall not exceed 20 days from  
16 the time the dispute arises, unless it is modified by written  
17 agreement of the parties to the dispute. The dispute shall be  
18 considered to have arisen when one party sends the other parties  
19 a written Notice of Dispute.

20           65. a. In the event that the parties cannot resolve a  
21 dispute by informal negotiations under the preceding Paragraph,  
22 then the position advanced by EPA shall be considered binding  
23 unless, within 14 days after the conclusion of the informal  
24 negotiation period, Settling Defendants invoke the formal dispute  
25 resolution procedures of this Section by serving on the United  
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1 States a written Statement of Position on the matter in dispute,  
2 including, but not limited to, any factual data, analysis or  
3 opinion supporting that position and any supporting documentation  
4 relied upon by the Settling Defendants. The Statement of  
5 Position shall specify the Settling Defendants' position as to  
6 whether formal dispute resolution should proceed under  
7 Paragraph 66 or Paragraph 67.

8       b. Within 14 days after receipt of Settling  
9 Defendants' Statement of Position, EPA will serve on Settling  
10 Defendants its Statement of Position, including, but not limited  
11 to, any factual data, analysis, or opinion supporting that  
12 position and all supporting documentation relied upon by EPA.  
13 EPA's Statement of Position shall include a statement as to  
14 whether formal dispute resolution should proceed under  
15 Paragraph 66 or Paragraph 67. Within 7 days after receipt of  
16 EPA's Statement of Position, Settling Defendants may submit a  
17 Reply.

18       c. If there is disagreement between EPA and the  
19 Settling Defendants as to whether dispute resolution should  
20 proceed under Paragraph 66 or 67, the parties to the dispute  
21 shall follow the procedures set forth in the paragraph determined  
22 by EPA to be applicable. However, if the Settling Defendants  
23 ultimately appeal to the Court to resolve the dispute, the Court  
24 shall determine which paragraph is applicable in accordance with  
25 the standards of applicability set forth in Paragraphs 66 and 67.



1           66. Formal dispute resolution for disputes pertaining  
2 to the selection or adequacy of any response action and all other  
3 disputes that are accorded review on the administrative record  
4 under applicable principles of administrative law shall be  
5 conducted pursuant to the procedures set forth in this Paragraph.  
6 For purposes of this Paragraph, the adequacy of any response  
7 action includes, without limitation: (1) the adequacy or  
8 appropriateness of plans, procedures to implement plans, or any  
9 other items requiring approval by EPA under this Consent Decree;  
10 and (2) the adequacy of the performance of response actions taken  
11 pursuant to this Consent Decree. Nothing in this Consent Decree  
12 shall be construed to allow any dispute by Settling Defendants  
13 regarding the validity of the ROD's provisions.

14           a. An administrative record of the dispute shall be  
15 maintained by EPA and shall contain all statements of position,  
16 including supporting documentation, submitted pursuant to this  
17 Section. Where appropriate EPA may allow submission of  
18 supplemental statements of position by the parties to the  
19 dispute.

20           b. The Director of the Office of Environmental  
21 Cleanup, EPA Region 10, will issue a final administrative  
22 decision resolving the dispute based on the administrative record  
23 described in Paragraph 66(a). This decision shall be binding  
24 upon the Settling Defendants, subject only to the right to seek  
25 judicial review pursuant to Paragraph 66(c) and 66(d).

1 c. Any administrative decision made by EPA pursuant to  
2 Paragraph 66(b) shall be reviewable by this Court, provided that  
3 a motion for judicial review of the decision is filed by the  
4 Settling Defendants with the Court and served on all Parties  
5 within 14 days of receipt of EPA's decision or within such other  
6 time as agreed to by EPA and the Settling Defendant filing the  
7 motion for review. The motion shall include a description of the  
8 matter in dispute, the efforts made by the parties to resolve it,  
9 the relief requested, and the schedule, if any, within which the  
10 dispute must be resolved to ensure orderly implementation of this  
11 Consent Decree. The United States may file a response to  
12 Settling Defendants' motion within 14 days of receipt of Settling  
13 Defendants' motion.

14 d. In proceedings on any dispute governed by this  
15 Paragraph, Settling Defendants shall have the burden of  
16 demonstrating that the decision of the Director of the Office of  
17 Environmental Cleanup is arbitrary and capricious or otherwise  
18 not in accordance with law. Judicial review of EPA's decision  
19 shall be on the administrative record compiled pursuant to  
20 Paragraph 66(a).

21 67. Formal dispute resolution for disputes that  
22 neither pertain to the selection or adequacy of any response  
23 action nor are otherwise accorded review on the administrative  
24 record under applicable principles of administrative law, shall  
25 be governed by this Paragraph.

1           a.     Following receipt of Settling Defendants'  
2 Statement of Position submitted pursuant to Paragraph 65, the  
3 Director of the Office of Environmental Cleanup, EPA Region 10,  
4 will issue a final decision resolving the dispute. The Office of  
5 Environmental Cleanup Director's decision shall be binding on the  
6 Settling Defendants unless, within 14 days of receipt of the  
7 decision, the Settling Defendants file with the Court and serve  
8 on the parties a motion for judicial review of the decision  
9 setting forth the matter in dispute, the efforts made by the  
10 parties to resolve it, the relief requested, and the schedule, if  
11 any, within which the dispute must be resolved to ensure orderly  
12 implementation of the Consent Decree. The United States may file  
13 a response to Settling Defendants' motion within 14 days of  
14 receipt of Settling Defendants' motion.

15           b.     Notwithstanding Paragraph L of Section I  
16 (Background) of this Consent Decree, judicial review of any  
17 dispute governed by this Paragraph shall be governed by  
18 applicable principles of law.

19           68.    The invocation of formal dispute resolution  
20 procedures under this Section shall not extend, postpone or  
21 affect in any way any obligation of the Settling Defendants under  
22 this Consent Decree not directly in dispute, unless EPA or the  
23 Court agrees otherwise. Stipulated penalties with respect to the  
24 disputed matter shall continue to accrue but payment shall be  
25 stayed pending resolution of the dispute as provided in  
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1 Paragraph 77. Notwithstanding the stay of payment, stipulated  
2 penalties shall accrue from the first day of noncompliance with  
3 any applicable provision of this Consent Decree. In the event  
4 that the Settling Defendant does not prevail on the disputed  
5 issue, stipulated penalties shall be assessed and paid as  
6 provided in Section XX (Stipulated Penalties).

7 **XXI. STIPULATED PENALTIES**

8 69. With respect to the Work they are obligated to  
9 perform under Paragraph 6(b) and Appendix F of this Consent  
10 Decree, Settling Defendants shall be liable for stipulated  
11 penalties in the amounts set forth in Paragraphs 70 and 71 to the  
12 United States for failure to comply with the requirements of this  
13 Consent Decree specified below, unless excused under  
14 Section XVIII (Force Majeure). "Compliance" by Settling  
15 Defendants shall include completion of the activities under this  
16 Consent Decree or any work plan or other plan approved under this  
17 Consent Decree identified below in accordance with all applicable  
18 requirements of law, this Consent Decree, the SOW, and any plans  
19 or other documents approved by EPA pursuant to this Consent  
20 Decree and within the specified time schedules established by and  
21 approved under this Consent Decree.

22 70.

23 a. The following stipulated penalties shall accrue  
24 per violation per day for any noncompliance as identified in  
25 Paragraph 70(b):  
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<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	the first through the fourteenth day
\$1,000.00	the fifteenth through the thirtieth day
\$3,000.00	the thirty-first day and beyond

b. For failure to submit or complete in a satisfactory or timely manner:

- i. An original and any revised Remedial Design Work Plan;
- ii. An original and any revised 90% Prefinal Remedial Design;
- iii. An original and any revised Final Remedial Design;
- iv. An original and any revised Remedial Action Work Plan;
- v. Initiation of Remedial Action Field Work.
- vi. Completion of Remedial Action in accordance with the Final Remedial Action Work Plan.

71. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents or notifications pursuant to this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	the first through the fourteenth day
\$500.00	the fifteenth through the thirtieth day

1           \$1,000.00

the thirty-first through the  
ninetieth day

2  
3           72. In the event that EPA assumes performance of a  
4 portion or all of the Work pursuant to Paragraph 85 of  
5 Section XXI (Covenants Not to Sue by Plaintiff), the Settling  
6 Defendants upon whose behalf the assumed Work was performed, as  
7 specified in Appendix F, shall be liable for a stipulated penalty  
8 equal to the costs incurred by EPA in performing such Work. In  
9 addition to payment of this stipulated penalty, the Settling  
10 Defendants on whose behalf the assumed work was performed, shall,  
11 pursuant to Section XVI (Reimbursement of Response Costs),  
12 reimburse EPA for all response costs EPA incurs as a result of  
13 performing the assumed Work. However, the stipulated penalty  
14 referenced in this Paragraph shall not be less than one million  
15 dollars (\$1,000,000.00) for Work assumed by EPA in whole or part  
16 that is required by Paragraph 14(b)(i) or Paragraph 14(b)(ii).

17           73. All penalties shall begin to accrue on the day  
18 after the complete performance is due or the day a violation  
19 occurs, and shall continue to accrue through the final day of the  
20 correction of the noncompliance or completion of the activity.  
21 However, stipulated penalties shall not accrue: (1) with respect  
22 to a deficient submission under Section XI (EPA Approval of Plans  
23 and Other Submissions), during the period, if any, beginning on  
24 the thirty-first (31st) day after EPA's receipt of such  
25 submission until the date that EPA notifies Settling Defendants

1 of any deficiency; (2) with respect to a decision by the Director  
2 of the Office of Environmental Cleanup, EPA Region 10, under  
3 Paragraph 66(b) or 67(a) of Section XIX (Dispute Resolution),  
4 during the period, if any, beginning on the twenty-first (21st)  
5 day after the date that Settling Defendants' reply to EPA's  
6 Statement of Position is received until the date that the  
7 Director issues a final decision regarding such dispute; or  
8 (3) with respect to judicial review by this Court of any dispute  
9 under Section XIX (Dispute Resolution), during the period, if  
10 any, beginning on the 31st day after the Court's receipt of the  
11 final submission regarding the dispute until the date that the  
12 Court issues a final decision regarding such dispute. Nothing  
13 herein shall prevent the simultaneous accrual of separate  
14 penalties for separate violations of this Consent Decree.

15         74. Following EPA's determination that Settling  
16 Defendants have failed to comply with a requirement of this  
17 Consent Decree, EPA shall give Settling Defendants written or  
18 oral notification of the same and describe the noncompliance.  
19 EPA shall send the Settling Defendants a written demand for the  
20 payment of the penalties. However, penalties shall accrue as  
21 provided in the preceding Paragraph and in Paragraph 37(a)  
22 regardless of whether EPA has notified the Settling Defendants of  
23 a violation.

24         75. All penalties accruing under this Section shall be  
25 due and payable within 30 days of the Settling Defendants'

1 receipt from EPA of a written demand for payment of the  
2 penalties, unless Settling Defendants invoke the Dispute  
3 Resolution procedures under Section XIX (Dispute Resolution).  
4 All payments to the United States under this Section shall be  
5 paid by certified or cashier's check(s) made payable to "EPA  
6 Hazardous Substances Superfund," shall be mailed to Mellon Bank,  
7 EPA Region 10, ATTN: Superfund Accounting, P.O. Box 360903M,  
8 Pittsburgh, Pennsylvania 15251, and shall reference the EPA  
9 Region and Site/Spill ID # 10Y7, the DOJ case number  
10 90-11-3-1516, and the name and address of the party making  
11 payment. Copies of check(s) paid pursuant to this Section, and  
12 any accompanying transmittal letter(s), shall be sent to the  
13 United States as provided in Section XXVI (Notices and  
14 Submissions).

15 76. The payment of penalties shall not alter in any  
16 way Settling Defendants' obligation to complete the performance  
17 of the Work required under this Consent Decree.

18 77. Penalties shall continue to accrue as provided in  
19 Paragraph 73 during any dispute resolution period, but need not  
20 be paid until the following:

21 a. If the dispute is resolved by agreement or by a  
22 decision of EPA that is not appealed to this Court, accrued  
23 penalties determined to be owing shall be paid to EPA within  
24 15 days of the agreement or the receipt of EPA's decision or  
25 order;

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1           b. If the dispute is appealed to this Court and the  
2 United States prevails in whole or in part, Settling Defendants  
3 shall pay all accrued penalties determined by the Court to be  
4 owed to EPA within 60 days of receipt of the Court's decision or  
5 order, except as provided in Paragraph 77(c);

6           c. If the District Court's decision is appealed by  
7 any Party, Settling Defendants shall pay all accrued penalties  
8 determined by the District Court to be owing to the United States  
9 into an interest-bearing escrow account within 60 days of receipt  
10 of the Court's decision or order. Penalties shall be paid into  
11 this account as they continue to accrue, at least every 60 days.  
12 Within 15 days of receipt of the final appellate court decision,  
13 the escrow agent shall pay the balance of the account to EPA or  
14 to Settling Defendants to the extent that they prevail.

15           78. a. If Settling Defendants fail to pay stipulated  
16 penalties when due, the United States may institute proceedings  
17 to collect the penalties, as well as Interest, to the extent that  
18 Interest has not already been collected pursuant to Paragraph  
19 77(c) from the interest bearing account. Settling Defendants  
20 shall pay Interest on the unpaid balance, which shall begin to  
21 accrue on the date of demand made pursuant to Paragraph 75.

22           b. Nothing in this Consent Decree shall be construed  
23 as prohibiting, altering, or in any way limiting the ability of  
24 the United States to seek any other remedies or sanctions  
25 available by virtue of Settling Defendants' violation of this  
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1 Decree or of the statutes and regulations upon which it is based,  
2 including, but not limited to, penalties pursuant to  
3 Section 122(1) of CERCLA. Provided, however, that the United  
4 States shall not seek civil penalties pursuant to Section 122(1)  
5 of CERCLA for any violation for which a stipulated penalty is  
6 provided herein, except in the case of a willful violation of the  
7 Consent Decree.

8 79. Notwithstanding any other provision of this  
9 Section, the United States may, in its unreviewable discretion,  
10 waive any portion of stipulated penalties that have accrued  
11 pursuant to this Consent Decree.

12 **XXI. COVENANTS NOT TO SUE BY PLAINTIFF**

13 80. In consideration of the actions that will be  
14 performed and the payments that will be made by the Settling  
15 Defendants under the terms of the Consent Decree, and except as  
16 specifically provided in Paragraphs 81, 82, and 84 of this  
17 Section, the United States covenants not to sue or to take  
18 administrative action against Settling Defendants pursuant to  
19 Sections 106 and 107(a) of CERCLA relating to the Site. Except  
20 with respect to future liability, these covenants not to sue  
21 shall take effect upon the receipt by EPA of the payments  
22 required by Paragraph 52 of Section XVI (Reimbursement of  
23 Response Costs). With respect to future liability, these  
24 covenants not to sue shall take effect upon Certification of  
25 Completion of Remedial Action by EPA pursuant to Paragraph 48(b)

1 of Section XIV (Certification of Completion). With respect to  
2 future liability, these covenants not to sue are conditioned upon  
3 the satisfactory performance by Settling Defendants of their  
4 obligations under this Consent Decree. These covenants not to  
5 sue extend only to the Settling Defendants and do not extend to  
6 any other person.

7 81. United States' Pre-Certification Reservations.

8 Notwithstanding any other provision of this Consent Decree, the  
9 United States reserves, and this Consent Decree is without  
10 prejudice to, the right to institute proceedings in this action  
11 or in a new action, or to issue an administrative order seeking  
12 to compel Settling Defendants (1) to perform further response  
13 actions relating to the Site or (2) to reimburse the  
14 United States for additional costs of response not inconsistent  
15 with the NCP if, prior to Certification of Completion of the  
16 Remedial Action:

17 (i) conditions at the Site, previously unknown to EPA,  
18 are discovered, or

19 (ii) information, previously unknown to EPA, is  
20 received, in whole or in part,

21 and these previously unknown conditions or information together  
22 with any other relevant information indicates that the Remedial  
23 Action is not protective of human health or the environment.

24 82. United States' Post-Certification Reservations.

25 Notwithstanding any other provision of this Consent Decree, the  
26 United States reserves, and this Consent Decree is without

1 prejudice to, the right to institute proceedings in this action  
2 or in a new action, or to issue an administrative order seeking  
3 to compel Settling Defendants (1) to perform further response  
4 actions relating to the Site or (2) to reimburse the  
5 United States for additional costs of response not inconsistent  
6 with the NCP if, subsequent to certification of completion of the  
7 Remedial Action:

8 (i) conditions at the Site, previously unknown to EPA,  
9 are discovered, or

10 (ii) information, previously unknown to EPA, is  
11 received, in whole or in part,

12 and these previously unknown conditions or this information  
13 together with other relevant information indicate that the  
14 Remedial Action is not protective of human health or the  
15 environment.

16 83. For purposes of Paragraph 81, the information and  
17 the conditions known to EPA shall include only that information  
18 and those conditions known to EPA as of the date the ROD was  
19 signed and set forth in the Record of Decision for the Site or  
20 the administrative record supporting the Record of Decision. For  
21 purposes of Paragraph 82, the information and the conditions  
22 known to EPA shall include only that information and those  
23 conditions known to EPA as of the date of Certification of  
24 Completion of the Remedial Action or set forth in the Record of  
25 Decision, the administrative record supporting the Record of  
26 Decision, the post-ROD administrative record, or in any

1 information received by EPA pursuant to the requirements of this  
2 Consent Decree prior to Certification of Completion of the  
3 Remedial Action.

4 84. General Reservations of Rights.

5 The covenants not to sue set forth above do not  
6 pertain to any matters other than those expressly specified in  
7 Paragraph 80. The United States reserves, and this Consent  
8 Decree is without prejudice to, all rights against Settling  
9 Defendants with respect to all other matters, including but not  
10 limited to, the following:

- 11 (1) claims based on a failure by Settling Defendants  
12 to meet a requirement of this Consent Decree;
- 13 (2) liability arising from the past, present, or  
14 future disposal, release, or threat of release of  
15 Waste Materials outside of the Site;
- 16 (3) liability for future disposal of Waste Material at  
17 the Site, other than as provided in the ROD, the  
18 Work, or otherwise ordered by EPA;
- 19 (4) liability for damages for injury to, destruction  
20 of, or loss of natural resources, and for the  
21 costs of any natural resource damage assessments;
- 22 (5) criminal liability;
- 23 (6) liability for violations of federal or state law  
24 which occur during or after implementation of the  
25 Remedial Action;
- 26 (7) liability for costs that the United States will  
27 incur related to the Site but are not within the  
28 definition of Future Response Costs; and
- (8) liability, prior to Certification of Completion of  
the Remedial Action, for additional response  
actions that EPA determines are necessary to  
achieve Performance Standards, but that cannot be

1 required pursuant to Paragraph 14 (Modification of  
2 the SOW or Related Work Plans).

3 85. Work Takeover. In the event EPA determines that  
4 Settling Defendants have ceased implementation of any portion of  
5 the Work, are seriously or repeatedly deficient or late in their  
6 performance of the Work, or are implementing the Work in a manner  
7 which may cause an endangerment to human health or the  
8 environment, EPA may assume the performance of all or any  
9 portions of the Work as EPA determines necessary. Settling  
10 Defendants may invoke the procedures set forth in Paragraph 66 of  
11 Section XIX (Dispute Resolution) to dispute EPA's determination  
12 that takeover of the Work is warranted under this Paragraph.  
13 Costs incurred by the United States in performing the Work  
14 pursuant to this Paragraph shall be considered Future Response  
15 Costs that Settling Defendants shall pay pursuant to Section XVI  
16 (Reimbursement of Response Costs).

17 86. Notwithstanding any other provision of this  
18 Consent Decree, the United States retains all authority and  
19 reserves all rights to take any and all response actions  
20 authorized by law that are not otherwise settled or resolved by  
21 this Consent Decree.

22 XXII. COVENANTS BY SETTLING DEFENDANTS

23 87. Covenant Not to Sue. Subject to the reservations  
24 in Paragraph 88, Settling Defendants hereby covenant not to sue  
25 and agree not to assert any claims or causes of action against  
26

1 the United States with respect to the Site or this Consent  
2 Decree, including, but not limited to:

3 a. any direct or indirect claim for reimbursement from  
4 the Hazardous Substance Superfund (established pursuant to the  
5 Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections  
6 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607,  
7 9611, 9612, 9613, or any other provision of law;

8 b. any claims against the United States, including any  
9 department, agency or instrumentality of the United States under  
10 CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to  
11 the Site, or

12 c. any claims arising out of response activities at  
13 the Site, including claims based on EPA's selection of response  
14 actions, oversight of response activities or approval of plans  
15 for such activities.

16 88. a. The Settling Defendants reserve, and this  
17 Consent Decree is without prejudice to, claims and causes of  
18 action against the United States, subject to the provisions of  
19 Chapter 171 of Title 28 of the United States Code, for money  
20 damages for injury or loss of property or personal injury or  
21 death caused by the negligent or wrongful act or omission of any  
22 employee of the United States while acting within the scope of  
23 his office or employment under circumstances where the  
24 United States, if a private person, would be liable to the  
25 claimant in accordance with the law of the place where the act or  
26

1 omission occurred. However, any such claim shall not include a  
2 claim for any damages caused, in whole or in part, by the act or  
3 omission of any person, including any contractor, who is not a  
4 federal employee as that term is defined in 28 U.S.C. § 2671; nor  
5 shall any such claim include a claim based on EPA's selection of  
6 response actions, or the oversight or approval of the Settling  
7 Defendants' plans or activities. The foregoing applies only to  
8 claims which are brought pursuant to any statute other than  
9 CERCLA and for which the waiver of sovereign immunity is found in  
10 a statute other than CERCLA.

11 b. Settling Defendants reserve all other claims and  
12 defenses permitted by law that are not expressly waived or  
13 resolved in this Consent Decree.

14 89. Nothing in this Consent Decree shall be deemed to  
15 constitute preauthorization of a claim within the meaning of  
16 Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
17 § 300.700(d).

18 **XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

19 90. Nothing in this Consent Decree shall be construed  
20 to create any rights in, or grant any cause of action to, any  
21 person not a Party to this Consent Decree. The preceding  
22 sentence shall not be construed to waive or nullify any rights  
23 that any person not a signatory to this decree may have under  
24 applicable law. Each of the Parties expressly reserves any and  
25 all rights (including, but not limited to, any right to  
26



1 contribution), defenses, claims, demands, and causes of action  
2 which each Party may have with respect to any matter,  
3 transaction, or occurrence relating in any way to the Site  
4 against any person not a Party hereto.

5 91. The Parties agree, and by entering this Consent  
6 Decree this Court finds, that the Settling Defendants are  
7 entitled, as of the effective date of this Consent Decree, to  
8 protection from contribution actions or claims as is provided by  
9 CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters  
10 addressed in this Consent Decree. Matters addressed shall  
11 include claims based on past and future response costs incurred  
12 by EPA or any other person in connection with the performance,  
13 funding or oversight of all response actions performed pursuant  
14 to In the Matter of: Burlington Northern Railroad,  
15 Administrative Order on Consent, Docket No. 1086-08-08-106  
16 (Jan. 22, 1987); In the Matter of: Amsted Industries, Inc.,  
17 Order on Consent for Necessary Response Action Pursuant to  
18 42 U.S.C. § 9606, No. 1089-08-07-106 (Aug. 28, 1989); In the  
19 Matter of: South Tacoma Field Site, U.S. EPA Docket No.  
20 1090-09-03-104/122 (Oct. 15, 1990); In the Matter of: Amsted  
21 Industries, Inc., Order on Consent for Necessary Response Action  
22 Pursuant to 42 U.S.C. § 9606, No. 1091-05-10-106 (May 17, 1991);  
23 and In the Matter of: Amsted Industries, Inc., Amended Order on  
24 Consent for Necessary Response Action Pursuant to 42 U.S.C.  
25 § 9606, No. 1091-05-10-106 (March 5, 1992); this Consent Decree;

1 and response actions incurred in connection with the Stormwater  
2 Work.

3 92. The Settling Defendants agree that with respect to  
4 any suit or claim for contribution brought by them for matters  
5 related to this Consent Decree they will notify the United States  
6 in writing no later than 60 days prior to the initiation of such  
7 suit or claim.

8 93. The Settling Defendants also agree that with  
9 respect to any suit or claim for contribution brought against  
10 them for matters related to this Consent Decree they will notify  
11 in writing the United States within 10 days of service of the  
12 complaint on them. In addition, Settling Defendants shall notify  
13 the United States within 10 days of service or receipt of any  
14 Motion for Summary Judgment and within 10 days of receipt of any  
15 order from a court setting a case for trial.

16 94. In any subsequent administrative or judicial  
17 proceeding initiated by the United States for injunctive relief,  
18 recovery of response costs, or other appropriate relief relating  
19 to the Site, Settling Defendants shall not assert, and may not  
20 maintain, any defense or claim based upon the principles of  
21 waiver, res judicata, collateral estoppel, issue preclusion,  
22 claim-splitting, or other defenses based upon any contention that  
23 the claims raised by the United States in the subsequent  
24 proceeding were or should have been brought in the instant case;  
25 provided, however, that nothing in this Paragraph affects the  
26

1 enforceability of the covenants not to sue set forth in  
2 Section XXI (Covenants Not to Sue by Plaintiff).

3           XXIV. ACCESS TO INFORMATION

4           95. Settling Defendants shall provide to EPA, upon  
5 request, copies of all documents and information within their  
6 possession or control or that of their contractors or agents  
7 relating to activities at the Site or to the implementation of  
8 this Consent Decree, including, but not limited to, sampling,  
9 analysis, chain of custody records, manifests, trucking logs,  
10 receipts, reports, sample traffic routing, correspondence, or  
11 other documents or information related to the Work. Settling  
12 Defendants shall also make available to EPA, for purposes of  
13 investigation, information gathering, or testimony, their  
14 employees, agents, or representatives with knowledge of relevant  
15 facts concerning the performance of the Work.

16           96. a. Settling Defendants may assert business  
17 confidentiality claims covering part or all of the documents or  
18 information submitted to Plaintiff under this Consent Decree to  
19 the extent permitted by and in accordance with Section 104(e)(7)  
20 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).  
21 Documents or information determined to be confidential by EPA  
22 will be afforded the protection specified in 40 C.F.R. Part 2,  
23 Subpart B. If no claim of confidentiality accompanies documents  
24 or information when they are submitted to EPA, or if EPA has  
25 notified Settling Defendants that the documents or information

1 are not confidential under the standards of Section 104(e)(7) of  
2 CERCLA, the public may be given access to such documents or  
3 information without further notice to Settling Defendants.

4       b. The Settling Defendants may assert that certain  
5 documents, records and other information are privileged under the  
6 attorney-client privilege, work product doctrine, or any other  
7 privilege recognized by federal law. If the Settling Defendants  
8 assert such a privilege in lieu of providing documents, they  
9 shall provide the Plaintiff with the following: (1) the title of  
10 the document, record, or information; (2) the date of the  
11 document, record, or information; (3) the name and title of the  
12 author of the document, record, or information; (4) the name and  
13 title of each addressee and recipient; (5) a description of the  
14 subject matter of the document, record, or information: and (6)  
15 the privilege asserted by Settling Defendants. However, no  
16 documents, reports or other information created or generated  
17 pursuant to the requirements of the Consent Decree shall be  
18 withheld on the grounds that they are privileged.

19       97. No claim of confidentiality shall be made with  
20 respect to any data, including, but not limited to, all sampling,  
21 analytical, monitoring, hydrogeologic, scientific, chemical, or  
22 engineering data, or any facts included in other documents or  
23 information evidencing conditions at or around the Site.

1 XXV. RETENTION OF RECORDS

2 98. Until 10 years after the Settling Defendants'  
3 receipt of EPA's notification pursuant to Paragraph 49(b) of  
4 Section XIV (Certification of Completion), each Settling  
5 Defendant shall preserve and retain all records and documents now  
6 in its possession or control or which come into its possession or  
7 control that relate in any manner to the performance of the Work  
8 or liability of any person for response actions conducted and to  
9 be conducted at the Site, regardless of any corporate retention  
10 policy to the contrary. Until 10 years after the Settling  
11 Defendants' receipt of EPA's notification pursuant to  
12 Paragraph 49(b) of Section XIV (Certification of Completion),  
13 Settling Defendants shall also instruct their contractors and  
14 agents to preserve all documents, records, and information of  
15 whatever kind, nature or description relating to the performance  
16 of the Work.

17 99. At the conclusion of this document retention  
18 period, Settling Defendants shall notify the United States at  
19 least 90 days prior to the destruction of any such records or  
20 documents, and, upon request by the United States, Settling  
21 Defendants shall deliver any such records or documents to EPA.  
22 The Settling Defendants may assert that certain documents,  
23 records and other information are privileged under the attorney-  
24 client privilege, work product doctrine, or any other privilege  
25 recognized by federal law. If the Settling Defendants assert  
26

1 such a privilege, they shall provide the Plaintiff with the  
2 following: (1) the title of the document, record, or  
3 information; (2) the date of the document, record, or  
4 information; (3) the name and title of the author of the  
5 document, record, or information; (4) the name and title of each  
6 addressee and recipient; (5) a description of the subject matter  
7 of the document, record, or information; and (6) the privilege  
8 asserted by Settling Defendants. However, no documents, reports  
9 or other information created or generated pursuant to the  
10 requirements of the Consent Decree shall be withheld on the  
11 grounds that they are privileged.

12 100. Each Settling Defendant hereby certifies  
13 individually that, to the best of its knowledge and belief, after  
14 satisfactory inquiry, it has not altered, mutilated, discarded,  
15 destroyed or otherwise disposed of any records, documents or  
16 other information relating to its potential liability regarding  
17 the Site since notification of potential liability by the  
18 United States or the State or the filing of suit against it  
19 regarding the Site and that it has fully complied with any and  
20 all EPA requests for information pursuant to Section 104(e) and  
21 122(e) of CERCLA, 42 U.S.C. § § 9604(e) and 9622(e), and  
22 Section 3007 of RCRA, 42 U.S.C. § 6927.

23 XXVI. NOTICES AND SUBMISSIONS

24 101. Whenever, under the terms of this Consent Decree,  
25 written notice is required to be given or a report or other  
26

1 document is required to be sent by one Party to another, it shall  
2 be directed to the individuals at the addresses specified below,  
3 unless those individuals or their successors give notice of a  
4 change to the other Parties in writing. All notices and  
5 submissions shall be considered effective upon receipt, unless  
6 otherwise provided. Written notice as specified herein shall  
7 constitute complete satisfaction of any written notice  
8 requirement of the Consent Decree with respect to the  
9 United States, EPA, and the Settling Defendants, respectively.

10 As to the United States:

11 Chief, Environmental Enforcement Section  
12 Environment and Natural Resources Division  
13 U.S. Department of Justice  
14 P.O. Box 7611  
15 Ben Franklin Station  
16 Washington, D.C. 20044  
17 Re: DOJ # 90-11-3-1516

18 As to EPA:

19 Cami Grandinetti  
20 Remedial Project Manager  
21 OEC, Superfund  
22 U.S. EPA Region 10  
23 1200 Sixth Avenue, HW-124  
24 Seattle, Washington 98101

25 Randall F. Smith  
26 Director, Office of Environmental Cleanup  
27 U.S. EPA Region 10  
28 1200 Sixth Avenue, HW-114  
Seattle, Washington 98101

29 As to the Settling Defendants:

30 [Name]  
31 Settling Defendants' Project Coordinator  
32 [Address]

1                   XXVII. EFFECTIVE DATE

2           102. The effective date of this Consent Decree shall be  
3 the date upon which this Consent Decree is entered by the Court,  
4 except as otherwise provided herein.

5                   XXVIII. RETENTION OF JURISDICTION

6           103. This Court retains jurisdiction over both the  
7 subject matter of this Consent Decree and the Settling Defendants  
8 for the duration of the performance of the terms and provisions  
9 of this Consent Decree for the purpose of enabling any of the  
10 Parties to apply to the Court at any time for such further order,  
11 direction, and relief as may be necessary or appropriate for the  
12 construction or modification of this Consent Decree, or to  
13 effectuate or enforce compliance with its terms, or to resolve  
14 disputes in accordance with Section XIX (Dispute Resolution)  
15 hereof.

16                   XXIX. APPENDICES

17           104. The following appendices are attached to and  
18 incorporated into this Consent Decree:

19           "Appendix A" is the ROD.

20           "Appendix B" is the SOW.

21           "Appendix C" is the maps of the Site.

22           "Appendix D" is the complete list of the Settling  
23 Defendants.

24           "Appendix E" is the complete list of the Owner Settling  
25 Defendants.



1 "Appendix F" is the allocation of responsibility.

2 "Appendix G" is the Reservation of Access Easement and  
3 Restrictions on Use.

4 "Appendix H" is the Environmental Protection Restrictive  
5 Covenant and Access Easement.

6 "Appendix I" is the Lease Prohibition.

7 XXX. COMMUNITY RELATIONS

8 105. Settling Defendants shall propose to EPA their  
9 participation in the community relations plan to be developed by  
10 EPA. EPA will determine the appropriate role for the Settling  
11 Defendants under the Plan. Settling Defendants shall also  
12 cooperate with EPA in providing information regarding the Work to  
13 the public. As requested by EPA, Settling Defendants shall  
14 participate in the preparation of such information for  
15 dissemination to the public and in public meetings which may be  
16 held or sponsored by EPA to explain activities at or relating to  
17 the Site.

18 XXXI. MODIFICATION

19 106. Schedules specified in this Consent Decree for  
20 completion of the Work may be modified by agreement of EPA and  
21 the Settling Defendants. All such modifications shall be made in  
22 writing.

23 107. Except as provided in Paragraph 14 ("Modification  
24 of the SOW or related Work Plans"), no material modifications  
25 shall be made to the SOW without written notification to and  
26

1 written approval of the United States, Settling Defendants, and  
2 the Court. Modifications to the SOW that do not materially alter  
3 that document may be made by written agreement between EPA and  
4 the Settling Defendants.

5 108. Nothing in this Decree shall be deemed to alter  
6 the Court's power to enforce, supervise or approve modifications  
7 to this Consent Decree.

8 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

9 109. This Consent Decree shall be lodged with the Court  
10 for a period of not less than thirty (30) days for public notice  
11 and comment in accordance with Section 122(d)(2) of CERCLA,  
12 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States  
13 reserves the right to withdraw or withhold its consent if the  
14 comments regarding the Consent Decree disclose facts or  
15 considerations which indicate that the Consent Decree is  
16 inappropriate, improper, or inadequate. Settling Defendants  
17 consent to the entry of this Consent Decree without further  
18 notice.

19 110. If for any reason the Court should decline to  
20 approve this Consent Decree in the form presented, this agreement  
21 is voidable at the sole discretion of any Party and the terms of  
22 the agreement may not be used as evidence in any litigation  
23 between the Parties.

1                                   XXXIII.   SIGNATORIES/SERVICE

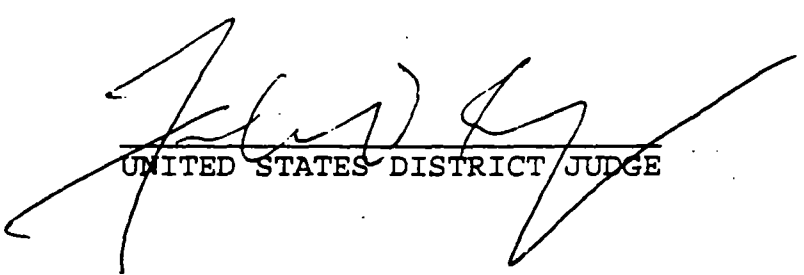
2                   111. Each undersigned representative of a Settling  
3 Defendant to this Consent Decree and the Assistant Attorney  
4 General for Environment and Natural Resources of the Department  
5 of Justice certifies that he or she is fully authorized to enter  
6 into the terms and conditions of this Consent Decree and to  
7 execute and legally bind such Party to this document.

8                   112. Each Settling Defendant hereby agrees not to  
9 oppose entry of this Consent Decree by this Court or to challenge  
10 any provision of this Consent Decree unless the United States has  
11 notified the Settling Defendants in writing that it no longer  
12 supports entry of the Consent Decree.

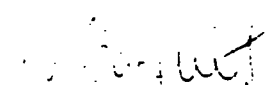
13                   113. Each Settling Defendant shall identify, on the  
14 attached signature page, the name, address and telephone number  
15 of an agent who is authorized to accept service of process by  
16 mail on behalf of that Party with respect to all matters arising  
17 under or relating to this Consent Decree. Settling Defendants  
18 hereby agree to accept service in that manner and to waive the  
19 formal service requirements set forth in Rule 4 of the Federal  
20  
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1 Rules of Civil Procedure and any applicable local rules of this  
2 Court, including, but not limited to, service of a summons.

3 Dated this 10 day of Jan, 1997.

4  
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6   
UNITED STATES DISTRICT JUDGE

7  
8 Presented By:


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11 Brian C. Kipnis  
12 Assistant United States Attorney  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al, for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

5  
6  
7 FOR THE UNITED STATES OF AMERICA:


8  
9  
10  
11 Date:

9/27/96

  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20005

12  
13  
14  
15  
16 Date:

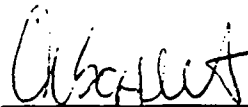
9/28/96

  
Patrick M. Casey  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Ben Franklin Station  
P.O. Box 7611  
Washington, D.C. 20044  
(206) 514-1448

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al, for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

5  
6 FOR THE UNITED STATES OF AMERICA (cont'd.):

7  
8 Date: 9/30/96

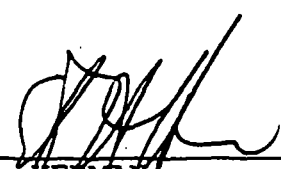
9   
10 BRIAN C. KIPNIS

11 Assistant United States Attorney  
12 U.S. Attorney's Office  
13 Western District of Washington  
14 3600 Seafirst Fifth Avenue Plaza  
15 800 Fifth Avenue  
16 Seattle, Washington 98104  
17 (206) 553-7970


1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al, for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

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FOR THE UNITED STATES OF AMERICA (cont'd.):

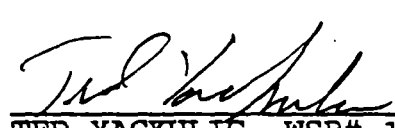
Date: 9/25/96

  
STEVEN A. HERMAN  
Assistant Administrator for  
Enforcement  
U.S. Environmental Protection  
Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Date: 9/17/96

  
CHUCK CLARKE  
Regional Administrator  
U.S. EPA Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

Date: 9/17/96

  
TED YACKULIC, WSB# 16065  
Assistant Regional Counsel  
U.S. EPA Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-1218

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al, for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

5  
6 FOR AMSTED INDUSTRIES INCORPORATED:

7  
8 Date: Aug 22, 1996

Thomas C Berg  
9 Thomas C. Berg  
10 Vice President  
11 Amsted Industries Incorporated  
12 Boulevard Towers South  
44th Floor  
205 North Michigan Avenue  
Chicago, Ill. 60601

13 Agent Authorized to Accept Service on Behalf of Above-signed  
14 Party:

15 Name: William F. Joyce  
16 Title: Attorney  
17 Address: Ogden Murphy Wallace, PLLC  
2100 Westlake Center Tower  
1601 Fifth Avenue  
Seattle, WA 98101-1686  
18 Tel. Number: (206) 447-7000  
FAX (206) 447-0215



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al, for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

5  
6 FOR BURLINGTON NORTHERN RAILROAD COMPANY AND BN LEASING  
7 CORPORATION:

8  
9 Date: August 2, 1996

For BN Leasing Corp.

For BN RR:

Michael W. Frankel

Vice President & Chief Engineer

Dennis E. Springer

Vice President and Chief Engineer

13 Agent Authorized to Accept Service on Behalf of Above-signed  
14 Party:

15 Name: Bruce Sheppard

16 Title: Manager of Environmental Projects

17 Address: 999 3rd Ave. Ste. 2000, Seattle. WA 98104-

18 Tel. Number: 1105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al, for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

5  
6 FOR PIONEER BUILDERS SUPPLY, INC.:

7  
8 Date: 8-7-96

Larry James Davis  
9 President  
10 Pioneer Builders Supply, Inc.  
11 5401 South Burlington Way  
Tacoma, Washington 98409

12 Agent Authorized to Accept Service on Behalf of Above-signed  
13 Party:

14 Name: Robie G. Russell  
15 Title: 315 Second Avenue South, Suite 300  
Address: Seattle, Washington 98104  
16 Tel. Number: (206) 622-7050  
17  
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21  
22  
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24  
25  
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al, for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

5  
6 FOR SOUTH TACOMA L.L.C.:

7  
8 Date:

August 6, 1996 Richard G. Anderson

Richard G. Anderson

Manager

11407 Old Brolin Place

Anderson Island, WA 98303

9  
10  
11  
12 Agent Authorized to Accept Service on Behalf of Above-signed  
13 Party:

14 Name:

Mark R. Patterson

15 Title:

Attorney

16 Address:

Vandenberg Johnson & Gandara  
1201 Pacific Avenue, Suite 1900  
Tacoma, WA 98402

17 Tel. Number:

(206) 383-3791

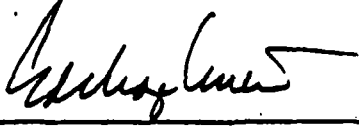
18 Fax:

(206) 383-6377

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al., for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

5  
6 FOR ATLAS FOUNDRY & MACHINE COMPANY, A DIVISION OF TIC UNITED  
7 CORP.:

8 Date: August 7, 1996

  
Edward S. Chapline, III  
Secretary  
TIC United Corp.  
4645 N. Central Expressway  
Dallas, TX 75205  
(214) 559-9584

12  
13 Agent Authorized to Accept Service on Behalf of Above-signed  
14 Party:

14 Name: Peter Haller  
15 Title: Attorney at Law  
16 Address: Ater Wynne Hewitt Dudson & Skerritt  
17 Tel. Number: Two Union Street, Suite 5450  
Seattle WA 98101  
(206) 623-4711

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Burlington Northern Railroad Company,  
3 et al, for the South Tacoma Field Operable Unit of the  
4 Commencement Bay South Channel Superfund Site.

5  
6 FOR CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT  
7 DIVISION:

8  
9 Date:

8-6-96



Name Mark Crisson

Title Director of Utilities


Address P. O. Box 11007

Tacoma, WA 98411

10  
11  
12  
13 Agent Authorized to Accept Service on Behalf of Above-signed  
14 Party:

15 Name: G. S. Karavitis  
16 Title: Sr. Asst. City Attorney  
17 Address: P.O. Box 11007, Tacoma, WA 98411  
18 Tel. Number: (206) 502-8331

19 Approved as to form & legality:

20   
21 Senior Asst. City Attorney

APPENDIX A

RECORD OF DECISION

COMMENCEMENT BAY SOUTH TACOMA CHANNEL

SOUTH TACOMA FIELD OPERABLE UNIT

APPENDIX B

STATEMENT OF WORK

STATEMENT OF WORK  
FOR THE REMEDIAL DESIGN AND REMEDIAL ACTION  
AT THE SOUTH TACOMA FIELD OPERABLE UNIT  
OF THE COMMENCEMENT BAY SOUTH TACOMA CHANNEL SUPERFUND SITE

I. INTRODUCTION

This document sets forth the Scope of Work (SOW) for implementing the September 29, 1994, Record of Decision (ROD), for the South Tacoma Field (STF) Operable Unit (excluding the wetlands/drainage channel area of the site) for the Commencement Bay South Tacoma Channel Superfund site (the Site). It shall be the responsibility of the Settling Defendants to prepare, and submit for acceptance in accordance with Section III of this SOW documents for incorporating each element of this SOW. It shall also be the responsibility of the Settling Defendants' to undertake the work consistent with the National Contingency Plan (NCP), and to adhere to the requirements specified in this SOW, U.S. EPA's Superfund Remedial Design (RD) and Remedial Action RA Guidance, pertinent sections of the ROD as described below, the accepted Remedial Design/Remedial Action (RD/RA) Work Plan, and additional guidance provided by EPA.

The Settling Defendants are responsible for performing the work to implement the selected remedy as provided for specifically in the Consent Decree, Appendix F. EPA shall review the Settling Defendants work products and schedules, and conduct oversight of the Settling Defendants activities throughout the performance of the work.

II. DESCRIPTION OF THE REMEDIAL ACTION AND PERFORMANCE STANDARDS

The Settling Defendants shall design and implement the RA to meet the performance standards and specifications set forth in the ROD, the Consent Decree (CD), and this SOW.

A. Description and Implementation of the Remedial Action

The Settling Defendants shall design and implement the RA described in the September 29, 1994 Record of Decision, Commencement Bay South Tacoma Field Operable Unit. The major components of the RA shall be designed and implemented by the Settling Defendants as described below:



### STF Soils

- Excavate and solidify contaminated soil (except for PCB contaminated soil) that exceeds hot spot concentration levels. These levels are defined in Table 9-1 of the ROD. Initially, excavated material will be screened to remove oversize material (greater than #4 sieve size) and debris. Subsequently, the remaining soil shall be treated with Portland cement or other binding agents and water, as necessary. The oversized material will be handled in accordance with appropriate performance standards. The treated soil shall be spread on-site in six to twelve inch lifts and covered with a soil or an asphalt cap. The Settling Defendants shall treat soil in an area that has been graded to manage surface water run-on and runoff. The Settling Defendants shall cover temporary soil stockpiles and use temporary control methods (e.g., silt fences and/or straw bales) to prevent contaminated runoff.

- Excavate soil contaminated with PCBs above 50 ppm and either incinerate the soil at an approved off-site incinerator or dispose of the soil off-site at a permitted chemical waste landfill. Soil contaminated with PCBs above 50 ppm was found in only one location, at Pioneer Builders Supply (one sample at 56 ppm). The Settling Defendants shall excavate soil containing PCB concentrations greater than 50 ppm in the vicinity of this sample location for either off-site incineration or disposal as described above.

Confirmation sampling during excavation may include, but is not limited to, hand augering, Hydro-punching, or borings at appropriate depths using field screening instruments (i.e., EPA approved field tests and/or instruments) to characterize areas with PCB concentrations greater than 50 ppm. However, laboratory confirmation shall be required for samples presumed to be below the cleanup levels.

- Excavate, consolidate to the extent practicable and compatible with potential future site development, and as appropriate for mitigating exposure to hazardous substances, and contain (cap) soils on-site which exceed site capping levels defined in Table 9-2 and fall below hot-spot levels defined in Table 9-1 of the ROD. Other contaminants identified in Table 9-2 in soil which exceed Method A industrial cleanup levels shall also be excavated, consolidated to the extent practicable and compatible with potential future site development and as appropriate for mitigating exposure

to hazardous substances, and contained. Contaminated soil shall be capped with either a soil or asphalt cap.

Excavation of soil is not required beyond a depth of one foot. However, if after excavation of one foot of soil, an area is still contaminated above the soil capping levels in Table 9-2, (based on sampling conducted by the Settling Defendants), the Settling Defendants shall cap this area. At their discretion, the Settling Defendants may choose to continue excavating below a depth of one foot until contaminants in soil are below capping levels or until the MTCA fifteen foot point of compliance is met. If capping levels are achieved, capping would not be required in that location.

The areas which shall be excavated, consolidated and capped shall be determined using the data and sampling grids developed during the Remedial Investigation (RI). The decision to excavate a sampling grid may be modified if additional samples collected in that grid indicate that chemicals in the soil are below the capping levels identified in Table 9-2 of the ROD. If the Settling Defendants want to use a statistical approach to determine areas needing excavation, consolidation, and capping, then statistical averaging of data shall be conducted on the additional data collected during RD/RA from the locations within the existing grid system. The Settling Defendants shall submit the statistical approach to EPA for review and approval.

Two types of caps, asphalt and soil, are allowed. The soil cap shall consist of a minimum of six inches of bank run gravel topped by a minimum of six inches of top soil and vegetation. Before placing the soil cap the area shall be cleared; and if required to control erosion, the subgrade shall be graded to improve drainage. The asphalt cap shall consist of a minimum of three inches of asphalt overlaying a minimum of six inches of crushed rock. A storm drain system, if necessary, shall be designed in accordance with state and local standards for areas where asphalt caps are constructed.

To the maximum extent practical, the Settling Defendants shall place the asphalt cap in those areas where the highest concentrations of untreated contamination is located so that soil in these areas will be less likely to be disturbed during future development of the site. The Settling Defendants shall prepare an Operation and Maintenance Plan which shall

include but is not limited to procedures for periodically inspecting and repairing (as necessary) capped areas and conducting repairs to maintain the integrity of the cap.

- Submit a site development plan during RD identifying the locations where asphalt and soil caps would be used and discussing how future land development will be compatible with and maintain the integrity of the capped areas. The plan will also discuss how the caps could be modified or replaced during future development activities using the EPA guidance, Geotechnical Systems for Structures on Contaminated Sites, March 1993.
- Conduct air monitoring during excavation, treatment and earth-moving activities to assess whether standards for airborne contaminant emissions have been exceeded in the work area or at the site boundary. Monitoring will include but not be limited to particulate dust meters. Air monitoring action levels shall be included as part of the Health and Safety Plan (HASP) and Work Plan.
- Either contain (cap) soils with a soil or asphalt cap in the Swamp/Lakebed that showed chemicals in subsurface soil above capping levels, or collect soil samples in the former Swamp/Lakebed area during RD to assess whether at least one foot of soil, functionally equivalent to the emplaced soil caps, is in place above the soil in excess of capping levels. If less than one foot of soil, with chemical concentrations below capping levels shown in Table 9-2, is found to be present in these areas, or if the existing surface soil characteristics are insufficient to provide protection against contact, the Settling Defendants shall place a soil cap or asphalt cap in these areas.
- Develop a plan for implementing, and implement, institutional controls that may include: deed restrictions, physical access restrictions, warning signs, safety measures and educational programs designed to prohibit activities that may lead to exposure to contaminants.
- Monitor groundwater at selected on-site and off-site wells, including wells in the vicinity of the petroleum hydrocarbon contamination detected at the Amsted site. The wells to be sampled will be determined during RD. Biannual monitoring shall be conducted with one sampling event occurring in April and another during October of each year for two years. Subsequently, assuming no significant changes in water quality, groundwater shall be monitored annually. The

contaminants to be monitored for at Pioneer Builders Supply are those shown for groundwater in Table 9-4 in the ROD. The contaminants to be analyzed for at the Amsted Property will include total petroleum hydrocarbons and polynuclear aromatic hydrocarbons. The contaminants to be monitored at onsite and offsite locations are inorganics that will be presented in the SAP. EPA will use the monitoring data to assess trends in groundwater quality. EPA will review the monitoring program at the five year review to determine whether additional actions are required or whether the monitoring program should be modified or discontinued.

#### Pioneer Builders Supply

- Collect additional data to define the extent of groundwater contamination. The Settling Defendants shall install groundwater monitoring wells to collect additional data during RD to aid in the pilot study for the air sparging and in situ vapor extraction system (see D. below). These data shall be used to define the vertical and horizontal extent of the plume. The Settling Defendants shall install a minimum of three additional monitoring wells and monitor the wells quarterly for one year (minimum data necessary to scope the air sparging and in situ vapor extraction system, if required, or other appropriate actions). The location of additional groundwater monitoring wells shall be approved by EPA during RD. The procedures used to locate the monitoring wells may include the use of "Hydro-punching" to collect soil and groundwater samples. This method may prove more cost effective, timely, and reduce the number of new monitoring wells.
- Evaluate the need for RD at Pioneer Builders Supply based on data collected from the existing monitoring well at Pioneer Builders Supply and the three additional wells described above.
- If necessary, implement air sparging and in situ vapor extraction in the vicinity of Pioneer Builders Supply to clean up contaminated subsurface soil and groundwater to below cleanup levels identified in Table 9-4 of the ROD. During RD, the Settling Defendants may propose other actions that will be protective of human health and the environment. These other actions will be subject to EPA evaluation and approval.
- Develop a plan for implementing, and implement, institutional controls to prohibit drinking water use

of contaminated groundwater that is above clean up levels and restrict land use.

- Conduct monitoring for evaluation of the treatment system (if necessary), compliance with cleanup levels and to determine whether additional actions will be required.

#### Tacoma City Light Dry Wells

- Excavate all soil from dry wells identified during the RI with PCB concentrations above 50 ppm or endrin concentrations above 0.13 ppm and transport the soil off-site for incineration.
- Excavate all soil from dry wells with PCB, PAH and other chemical concentrations above the MTCA Method B residential cleanup levels and transport these soils to an off-site permitted hazardous waste landfill for disposal.
- Conduct confirmation sampling to determine that compliance with MTCA Method B residential cleanup levels have been achieved.
- Backfill the dry wells with clean soil and install catch basins if necessary.

#### B. Performance Standards

The Settling Defendants shall meet all Performance Standards, as defined in the CD including the standards set forth in the attached ROD.

Performance standards shall include cleanup standards, substantive requirements, criteria, or limitations including all Applicable or Relevant and Appropriate Requirements (ARARS) set forth in the ROD, SOW, and/or CD. In addition, the Settling Defendants must meet all performance standards identified in the Remedial Design not addressed in the above documents, but which are identified, or become necessary during the Remedial Design period of the project.

Performance Standards which meet all chemical-specific, location-specific and action-specific ARARS for this site are presented in Tables 9-1, 9-2, 9-3, 9-4, and 9-5 of the ROD. The ROD is included as Appendix A of the CD.

### C. Compliance Testing

The Settling Defendants shall perform compliance testing to ensure that all Performance Standards are met. The Settling Defendants shall prepare a Performance Standards Verification Plan as described in Section VII, Task IV of this SOW. The Performance Standards Verification Plan will be used to evaluate treated soil for compliance with the Land Disposal Restrictions as discussed in 40 C.F.R. Part 268, compliance with cap design requirements, and evaluate effectiveness of the air sparging and soil vapor extraction systems (if necessary) for compliance with cleanup levels. After demonstration of compliance with Performance Standards, the Settling Defendants shall conduct long term monitoring of the site groundwater, including monitoring of the petroleum hydrocarbon contamination found at the Amsted property.

### D. Pilot Study

Based on available groundwater data, a pilot study may be necessary to determine the final design of the air sparging and soil vapor extraction systems. If required, the pilot system shall be designed and constructed such that it can be incorporated into the final extraction/treatment system. If the contaminated ground water plume is determined to be expanding or migrating in spite of this remedial action, then additional actions (system expansion or hydraulic control) may be required.

### E. Accuracy and Completeness

The Settling Defendants shall perform and shall assume all responsibility for the accuracy and completeness of the design work and services for the described project in accordance with this SOW and the CD. The Settling Defendants shall be responsible for the correction of any design errors or deficiencies in the plans or specifications submitted pursuant to this SOW. Should design changes as a result of revised criteria be required, the Settling Defendants may be instructed to perform the necessary redesign work.

In the event that discrepancies, omissions, or other errors in the drawings and specifications are discovered after final design document submission, the Settling Defendants shall revise the specifications and/or contract drawings or prepare sketches and provide the necessary data.

It shall be the responsibility of the Settling Defendants to check and coordinate project data to the extent required by current engineering standard of care prior to submission to

EPA. Deficiencies, ambiguities, conflicts and inconsistencies shall be rectified by the Settling Defendants prior to submittal of documents. A letter of transmittal shall state that the accompanying documents have been checked prior to submittal. The letter shall be signed by a principal of the Settling Defendants or the RD firm.

### III. ROLE OF EPA

#### EPA ACCEPTANCE

EPA acceptance of RA and RD contractors, plans, specifications, processes, and other submittals within the context of the CD is administrative in nature to allow the Settling Defendants to proceed to the next step. Acceptance does not imply any warranty of performance or that the remedy, when constructed, will meet performance standards or will function properly and be accepted.

Where applicable, EPA acceptance shall be made in consultation with the Washington State Department of Ecology.

### IV. THE SETTLING DEFENDANTS KEY PERSONNEL

#### A. DESIGNATION OF PROJECT COORDINATOR

Within 20 days of the lodging of the (CD), the Settling Defendants shall submit in writing, for EPA acceptance, the name, title, and qualifications of the proposed Project Coordinator, pursuant to the procedures in Section III, PROJECT COORDINATORS, paragraph 41 of the CD.

The Project Coordinator shall oversee the coordination of the entire project design and shall be capable of administering all instructions from coordinate activities with EPA and obtaining answers to all questions from EPA during and following completion of the design work. During the implementation of RD/RA work under the Decree, the Project Coordinator shall keep in close liaison with the EPA Remedial Project Manager (RPM).

#### B. REVIEW AND ACCEPTANCE OF SUPERVISING CONTRACTOR

Within 30 days of the lodging of the CD, the Settling Defendants shall submit the name and qualifications of the Supervising Contractor for acceptance by EPA based on project-specific qualifications and professional competence, pursuant to the procedures in Section VI, PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS, paragraph 10 of the CD. The

Supervising Contractor may come from the Settling Defendants' own staff or through a contractual relationship with a private consulting entity. In either case, the factors to be considered in EPA acceptance shall include professional and ethical reputation, professional registration, demonstrated design experience and qualifications specifically required for the project, sufficient capacity (Professional, Technical, and Support staff) to accomplish the project within the required schedule, and sufficient business background and financial resources to provide uninterrupted services throughout the life of the project.

The submitted information about the Supervising Contractor shall include a written statement of qualification in sufficient detail to allow EPA to make a full and timely evaluation.

C. DESIGNATION OF INDEPENDENT QUALITY ASSURANCE TEAM (IQAT)

Within 30 days of the lodging of the Consent Decree, the Settling Defendants shall submit the names, titles and qualifications for acceptance by EPA based on project-specific qualifications and professional competence, of the IQAT to oversee design and construction of the remedy.

V. VERIFICATION OF EXISTING CONDITIONS

The Settling Defendants are responsible for making the necessary field visits to assess existing conditions and to obtain such detailed information as is required to complete the design. The Settling Defendants shall obtain all data as required to ensure the complete and proper design of the project.

VI. CONSISTENCY WITH FEDERAL REQUIREMENTS

Performance of this project shall be completed consistent with the ROD, NCP, and CERCLA, as amended. The Settling Defendants shall ensure that the project is in compliance with the requirements of federal, state, and local clean air, clean water, and hazardous and solid waste disposal standards. The Settling Defendants shall ensure that the final design package(s) submitted to EPA are consistent with the technical requirements of all applicable or relevant and appropriate federal and state environmental regulations.



## VII. SCOPE OF THE REMEDIAL DESIGN AND REMEDIAL ACTION

The specific scope of this work shall be documented by the Settling Defendants in documents described in this SOW. Plans, specifications, submittals, and other deliverables shall be subject to EPA review and acceptance in accordance with Section XI of the CD.

The RD and RA shall consist of the following tasks:

### TASK I - REMEDIAL DESIGN

The RD shall provide the technical details for implementation of the RA in accordance with currently accepted environmental protection technologies and standard professional engineering and construction practices. The design shall include plans and specifications in sufficient detail to construct, operate, and maintain the RA. Planning documents are submitted as drafts, and after EPA reviews and supplies comments on the documents, the plans are revised and resubmitted for EPA acceptance. Design documents are submitted by the Settling Defendants, and after EPA reviews and supplies comments on the documents, responses to the comments are submitted to the EPA, and appropriate comments are incorporated into the subsequent design submittal.

#### A. Remedial Design Planning

##### 1. RD Work Plan

The Settling Defendants shall submit an RD Work Plan to EPA for review and acceptance. The Work Plan shall document the overall management strategy for performing the RD. The Work Plan shall include a description of additional data collection and evaluation activities to be performed, and the plans and specifications to be prepared. A schedule for completion of each major activity and submission of each deliverable shall also be included. If data collection shall be undertaken, a Sampling and Analysis Plan including Field Sampling Plan, Quality Assurance Project Plan, and a Health and Safety Plan shall be prepared. Previous submissions may be modified or referenced.

Specifically, the Work Plan shall present the following:

- a. A statement of the objectives of the RD/RA.
- b. Tentative formation of the design team, including the responsibility and authority of all organizations and key personnel involved with the implementation of the CD.

- c. A list and description of the tasks to be performed, information needed for each task, information to be produced during and at the conclusion of each task, and a description of the work products that shall be submitted to EPA.
- d. A schedule for the design with specific dates for completion of each required activity and submission of each deliverable required by the CD and this SOW, including timing of monthly reports to EPA and meetings and presentations to EPA at the conclusion of each major phase of the RD/RA.
- e. A data/document management plan. The data management plan shall address the requirements for tracking, sorting, and retrieving the data along with an identification of the software to be used, minimum data requirements, data format and backup data management. Groundwater data shall be submitted in electronic format according to EPA Region 10 Order R10 7500.1. The plan shall address both data management and document control for activities conducted during the RD/RA.

## 2. Sampling and Analysis Plan

The Settling Defendants shall submit a Sampling and Analysis Plan (or plans) (SAP(s)) that shall describe sample collection and analytical activities at Pioneer Builders Supply, during sampling at the Former Swamp/Lakebed (if necessary). The sampling collection and analytical activities shall be conducted in accordance with technically acceptable protocols and the data generated shall meet established Data Quality Objectives (DQOs). The SAP(s) shall include a Field Sampling and Analysis Plan (FSAP) and a Quality Assurance Project Plan (QAPP).

The FSAP shall describe the sampling and data-gathering methods that shall be used on the project. It shall include sampling objectives, sample location (horizontal and vertical) and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP shall describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that shall be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytical methods for obtaining data of sufficient quality to meet National Contingency Plan requirements as identified at 300.435 (b). In addition, the QAPP shall address personnel qualifications, sampling procedures, sample custody, analytical procedures, and data reduction, validation, and reporting.

The Settling Defendants shall demonstrate in advance and to EPA's satisfaction that each laboratory it may use is qualified to conduct the proposed work. EPA may require that the Settling Defendants submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment and material specification, and laboratory analyses of performance samples (blank and/or spike samples). In addition, EPA may require submittal of data packages equivalent to those generated by the EPA Contract Laboratory Program (CLP).

### 3. Health and Safety Plan

The Settling Defendants shall submit a Health and Safety Plan for the Pilot Study at Pioneer Builders Supply (see Section 4 below), if required, and for sampling activities in the Former Swamp/Lakebed (if necessary) during RD prepared in conformance with the Settling Defendants' health and safety program, and in compliance with Occupational Safety and Health Administration (OSHA) regulations and protocols. The Health and Safety Plan shall include a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and provisions for site control. EPA will not accept the Settling Defendants' Health and Safety Plan, but rather EPA will review it to verify that necessary elements are included, and that the plan provides for the protection of human health and the environment. The Remedial Investigation/Feasibility Study (RI/FS) Health and Safety Plan may be modified for the RD.

#### B. Preliminary Design

Upon acceptance of the RD Work Plan by EPA, the Settling Defendants will implement the Work Plan in accordance with the RD schedule contained therein. Such implementation shall include EPA review and/or approval of plans, specifications, submittals, and other deliverable in accordance with Section XI of the CD.

The design shall be reviewed by EPA at two phases during preparation: a Preliminary Design Presentation/Review and a Prefinal/Final Design.

The Settling Defendants will coordinate RD activities with EPA to facilitate completion of the work described in this SOW. As appropriate, the Settling Defendants will meet with EPA to discuss RD issues or describe the progress of the RD. Alternately, or in conjunction with these meetings, the

Settling Defendants may deliver working documents to EPA during the RD to expedite and facilitate formal reviews.

Resolution of comments and issues raised by EPA during these meetings [including the Preliminary (30%) Design Presentation/Review meeting] or after EPA's review of working documents, will be documented in a memorandum prepared by the Settling Defendants. The Settling Defendants will submit these memoranda to EPA for review and approval.

#### 1. Design Criteria Report

During the Preliminary Design and prior to the Preliminary Design Presentation/Review, the Settling Defendants will submit a Design Criteria Report to EPA. The concepts supporting the technical aspects of the design shall be presented in this report. Specifically, the Design Criteria Report shall include the preliminary design assumptions and parameters, including, but not limited to:

- a. Waste characterization
- b. Estimated volume of each media requiring treatment
- c. Treatment schemes (including all media and by-products)
- d. Influent and effluent qualities
- f. Design restrictions
- g. Materials and equipment
- h. Performance Standards
- i. Long-term monitoring requirements
- j. Concepts for site development
- k. Concepts for instituting institutional controls for STF soils and for groundwater in the vicinity of Pioneer Builders Supply
- l. Concepts for satisfying permitting or ARARs requirements.

The Design Criteria Report shall include as appendices:

- a. Sample calculations (one example presented and explained clearly for significant or unique design calculations; and,
- b. Derivation of equations essential to understanding the report.

#### 2. Preliminary (30%) Design Presentation/Review

When the design work is approximately 30 percent complete (in accordance with the accepted design management

schedule), the Settling Defendants will present the design information to EPA at a meeting. The meeting is an opportunity for the Settling Defendants to demonstrate progress in meeting requirements in the CD and this SOW, and to give EPA an opportunity to provide feedback for completing the RD documents expeditiously.

The Settling Defendants will present:

- a. Plans showing the proposed soil areas for remediation, stormwater management system, layouts of roads and utilities, and cap details.
- b. Methods, performance specifications, and locations for soil treatment facilities.
- c. Specification outline and/or sections.
- d. Summary of proposed plans for institutional controls, site development, and permitting requirements in outline format.
- e. Concepts associated with preparing the Performance Standard Verification Plan in outline format.
- f. A preliminary schedule for construction and implementation of the RA.

Results of the Preliminary Design Presentation/Review shall be documented in a memorandum prepared by the Settling Defendants for review and acceptance by EPA.

#### C. Prefinal/Final Design

The Settling Defendants shall submit the Prefinal Design when the design work is approximately 90 percent complete in accordance with the accepted design management schedule. The Settling Defendants shall address appropriate comments generated from the Preliminary Design Presentation/Review, and show any appropriate modification of the design as a result of incorporation of the comments.

Essentially, the Prefinal Design shall function as the draft version of the Final Design. After EPA review and comment on the Prefinal Design, the Final Design shall be submitted along with a memorandum indicating how the Prefinal Design comments were incorporated into the Final Design. The quality of the final design shall be such that it will be the basis for a bid package which invites contractors to submit bids for the construction project. The Final Design

documents shall be stamped, signed, and dated by a Professional Engineer registered in the State of Washington. EPA written acceptance of the Final Design is required before initiating the RA, unless specifically authorized by EPA. The following items shall be submitted with or as part of the Prefinal/Final Design:

1. Final Plans and Specifications

A complete set of final construction drawings and specifications, with sufficient detail for constructing, operating, and maintaining the RA, shall be submitted. Plans and specifications shall conform with the Construction Specifications Institute Master Format.

2. Final Construction Schedule

The Settling Defendants shall submit a final construction schedule to EPA for acceptance.

3. Construction Cost Estimate

A definitive estimate (within +15 percent to -5 percent of expected construction costs) based on existing information and reasonable assumptions regarding conditions, shall be submitted.

4. Site Development Plan

The Settling Defendants shall submit a site development plan identifying the locations where asphalt and soil caps would be used and discussing how future land development will be compatible with and maintain the integrity of the capped areas. The plan will also discuss how caps could be modified or replaced during future development activities using the EPA guidance, Geotechnical Systems for Structures on Contaminated Sites, March 1993.

5. Plan for Implementation of Institutional Controls

The Settling Defendants shall submit a plan for Implementation of Institutional Controls to EPA for review and approval. The Plan for Implementation of Institutional Controls shall include, at a minimum, deed restrictions, safety procedures, and educational programs.

- a. Deed Restrictions. The following deed restrictions shall apply to all real property described in Appendix F of the Consent Decree ("Property") and are binding on Owner Settling Defendants and are intended to bind

their lessees, transferees, successors, and assigns who assume any title or leasehold interest in the Property:

- (1) Unless approved by EPA, the Property shall not be used for residential purposes.
- (2) Unless approved by EPA, no action shall be taken or suffered which may (a) expose contaminated soil to the environment; or (b) disturb the integrity or effectiveness of any surface cap on the Property where the disturbance causes the release or threatened release to the environment of hazardous substances in excess of Site cleanup standards regardless of whether such cap was established as a requirement of the ROD.
- (3) Unless approved by EPA, groundwater from the restricted use area of the Pioneer Builders Supply Property, as determined during Remedial Design, shall not be used as a drinking water source until groundwater cleanup levels are achieved as defined in Table 9-4 of the ROD.
- (4) At least thirty (30) days prior to any conveyance of title or leasehold interest in the Property, the owner of the Property shall give written notice of the Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address for the grantee, and the date on which notice of the Consent Decree was given to the grantee.

b. Safety Procedures. The safety procedures shall be designed to minimize future contact with contaminated soils and shall provide guidance on the handling and disposal of contaminated soil in the event future contact does occur. The following information shall be included among the safety procedures: (1) text and diagrams indicating the location and concentration of soil contamination remaining on the Site; (2) a discussion of the remedial actions taken to address the soil contamination; (3) measures that must be taken to minimize soil disturbances during future site development; (4) procedures for routine maintenance or repair activities; (5) procedures for the proper disposal of soil; and (6) procedures to maintain the integrity of the selected remedy.

c. Educational Programs. The educational programs shall include the distribution of informational material to the community (nearby residents within one-half mile of the Site and current and future onsite workers) about

the hazards remaining at the Site. The educational information distributed to the community shall explain that the cleanup remedy is designed to protect non-residential populations, discuss the remaining chemical and physical hazards at the Site and discourage trespassing and the unauthorized use of the Site.

#### 6. Plan for Satisfying Permitting Requirements

Remedial actions shall be performed in accordance with the substantive requirements of all applicable federal and state laws and regulations identified in the ROD, the CD, or this SOW. Any off-site disposal shall be in compliance with the policies stated in the Procedure for Planning and Implementing Off-site Response Actions (Federal Register, Volume 50, Number 214, November, 1985, pages 45933 - 45937) and Federal Register, Volume 55, Number 46, March 8, 1990, page 8840, and the National Contingency Plan, Section 300.440. The plan shall identify the off-site disposal permits that are required, an estimate of the time required to process the permit applications, and a schedule for submittal of the permit applications.

#### 7. Performance Standard Verification Plan.

The Settling Defendants will prepare a performance standard verification plan as described in Task IV.

#### D. Other RD Activities

##### 1. Results of Data Acquisition Activities

Data gathered during the project planning phase shall be compiled, summarized, and submitted along with an analysis of the impact of the results on design activities. This includes results of groundwater monitoring to be used to develop the pilot study. In addition, surveys, if necessary, conducted to establish topography, rights-of-way, requirements and acquisition of access, through purchases or easements, that are necessary to implement the RA shall also be discussed. Data



will be presented in accordance with a schedule to be developed by the Settling Defendants and approved by EPA.

2. Pilot Study Work Plan (if necessary)

If necessary, based on groundwater monitoring data, the Settling Defendants shall prepare a Pilot Study Work Plan for EPA review and acceptance. A pilot study will be necessary for preparing the final design and plans and specifications of the air sparging and soil vapor extraction systems (if required). The pilot system shall be designed and constructed such that it can be incorporated into the final extraction/treatment system.

The Pilot Study Work Plan shall describe the technology to be tested, and test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, and residual waste management. The Pilot Study Work Plan shall also describe pilot plant installation and start-up, and operating conditions to be tested. If testing is to be performed off-site, permitting requirements shall be addressed.

A schedule for performing the pilot study shall be included with specific dates for the tasks, including, but not limited to, the procurement of contractors and the completion of sample collection, performance, sample analysis, and report preparation. The Work Plan shall describe the treatment process and the steps necessary to achieve the Performance Standards for the Site. Review and acceptance by EPA shall mean only that EPA considers the proposed technology, vendor, and study approach appropriate for the remedy selected for the applicable portions of the Site.

The Pilot Study Work Plan shall also address how the Settling Defendants propose to meet discharge requirements for all treated material, air, water and ejected effluents. Additionally, the Work Plan shall also explain the proposed final treatment and disposal of all material generated by the proposed treatment system. Substantive permitting requirements shall also be addressed. If the pilot system becomes the final system, the O & M plan shall be produced according to Task III in this SOW.

The schedule for submittal of the pilot study work plan (if required) will depend on the results of additional groundwater monitoring. Therefore, this work plan will be prepared and submitted separate from the other RD Planning documents.

3. Pilot Study Final Report (if required)

A final report of the pilot study (if implemented) will be required. This report shall provide the results of the pilot test as specified in the pilot test work plan. In addition, this report shall document that the system will proceed to full scale design (if necessary), any design modifications that will be necessary or whether additional actions (hydraulic control, etc.) shall be required.

The schedule for submission of the Pilot Study Final Report may be separate from other RD or Remedial Action activities because monitoring is required to evaluate the need for and extent of the pilot study.

TASK II - REMEDIAL ACTION

Remedial Action shall be performed by the Settling Defendants to implement the response actions selected in the ROD, as designed in accordance with Task I of this SOW.

A. Remedial Action Planning

Concurrent with the submittal of the Final 100% Design, the Settling Defendants shall submit a draft RA Work Plan, which will include a Construction Management Plan, a Construction Quality Assurance Plan, and a Construction Health and Safety Plan/Contingency Plan. Because the Construction Contractor may not be selected until the project is bid (after the Final Design), certain components of the Draft RA Work Plan (i.e., the Construction Health and Safety Plan and other documents requiring input from the Construction Contractor) will not be submitted as part of the draft RA Work Plan.

Upon acceptance of the Final Design and the RA Work Plan, the Settling Defendants shall implement the RA in accordance with the RA Work Plan. Significant field changes to the RA as set forth in the RA Work Plan and Final Design shall not be undertaken without the approval of EPA. The RA shall be documented in enough detail to produce as-built construction drawings after the RA is complete. Deliverables shall be submitted to EPA for review and acceptance in accordance with Section III of this SOW. Review and/or acceptance of

submittals does not imply acceptance of later submittals that have not been reviewed, or that the remedy, when constructed, will meet Performance Standards.

1. RA Work Plan

A Work Plan which provides a detailed plan of action for completing the RA activities shall be submitted to EPA for review and acceptance. The objective of this Work Plan is to provide for the safe and efficient completion of the RA. The Work Plan shall include a comprehensive description of the work to be performed and the Final Construction schedule for completion of each major activity and submission of each deliverable.

Specifically, the Work Plan shall present the following:

- a. A detailed description of the work to be performed and a description of the work products to be submitted to EPA. This includes the deliverables set forth in the remainder of Task II.
- b. A schedule for completion of each required activity and submission of each deliverable required by this CD, including those in this SOW. EPA will consider and provide extensions to the RA schedules as appropriate.
- c. A Construction Management Plan shall be developed to indicate how the construction activities are to be implemented and coordinated with EPA during the RA. The Settling Defendants shall designate a person to be an RA Coordinator and its representative on-site during the RA, and identify this person in the Plan. This Plan shall also include the following:
  - I. Identification of the RA Team for construction management, including the key personnel, descriptions of duties, and lines of authority;
  - ii. A description of the roles and relationships of the Settling Defendants, Project Coordinator, Resident Engineer, IQAT, Supervising Contractor, and the RA Construction Contractor; and,
  - iii. A plan for the administration of construction changes to include EPA review of changes that

may impact the implementation of the ROD in accordance with the CD and attachments.

- d. A Construction Quality Assurance Plan that shall incorporate relevant provisions of the Performance Standards Verification Plan (see Task IV). At a minimum, the Construction Quality Assurance Plan shall include the following elements:

- I. A Construction Quality Control Assurance Program. This program will describe the actions that shall be taken so that the RA attempts to meet or exceed the requirements described in plans and specifications and Performance Standards. The Construction Quality Control Assurance Program also will include:
  - ii. A description of the quality control organization, including a chart showing lines of authority, identification of the members of the IQAT, and acknowledgment that the IQAT will implement the control system for all aspects of the work specified and shall report to the project coordinator and EPA. The IQAT members shall be representatives from testing and inspection organizations and/or the Supervising Contractor and shall be responsible for the QA/QC of the RA. The members of the IQAT shall have a good professional and ethical reputation, previous experience in the type of QA/QC activities to be implemented, and demonstrated capability to perform the required activities.
  - iii. The name, qualifications, duties, authorities, and responsibilities of each person assigned a QC function.
  - iv. Description of the observations and control testing that will be used to monitor the construction and/or installation of the components of the RA. This includes information which certifies that personnel and laboratories performing the tests are qualified and the equipment and procedures to be used comply with applicable standards. Any laboratories to be used shall be specified. Acceptance/rejection criteria and plans for implementing corrective measures shall be addressed.

- v. A schedule for managing submittals, testing, inspections, and any other QA function (including those of contractors, subcontractors, fabricators, suppliers, purchasing agents, etc.) that involve assuring quality workmanship, verifying compliance with the plans and specifications, or any other QC objectives. Inspections shall verify compliance with all environmental requirements described in the RA or RD documents and include, but not be limited to, air quality and emissions monitoring records and waste disposal records, etc.
  - vi. Reporting procedures and reporting format for QA/QC activities including such items as daily summary reports, schedule of data submissions, inspection data sheets, problem identification and corrective measures reports, evaluation reports, acceptance reports, and final documentation.
- e. The Settling Defendants shall coordinate preparation of a Construction Health and Safety Plan/Contingency Plan in compliance with OSHA regulations and protocols. The Construction Contractor shall prepare the Construction Health and Safety Plan and assist the Settling Defendants in preparing the Contingency Plan. The Settling Defendants will submit the Construction Health and Safety Plan and the Contingency Plan to EPA. The Construction Health and Safety Plan shall include a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and site control. EPA will not accept the Construction Health and Safety Plan/Contingency Plan, but rather EPA will review it to verify that all necessary elements are included, and that the plan provides for the protection of human health and the environment. This plan shall include a Contingency Plan and an Air Monitoring Plan if determined by EPA to be applicable for the Site. The Contingency Plan is to be written for the on site construction workers and the local affected population. It shall include the following items:
- I. Name of person who will be responsible in the event of an emergency incident.

- ii. Plan for initial site safety indoctrination and training for all onsite remedial action employees, name of the person who will give the training and the topics to be covered.
- iii. A list of the first aid and medical facilities including, location of first aid kits, names of personnel trained in first aid, a clearly marked map with the route to the nearest medical facility, necessary emergency phone numbers conspicuously posted at the job site (i.e., fire, rescue, local hazardous material teams, National Emergency Response Team, etc.)
- iv. Plans for protection of public and visitors to the job site.
- v. Air Monitoring Plan which incorporates the following requirements:
  - a) Air monitoring shall be conducted both on-site and at the perimeter of the site. The Settling Defendants shall identify the parameters to be monitored and the detection and notification levels required in Paragraph 4 below. Air monitoring shall include personnel monitoring, on-site area monitoring, and perimeter monitoring.
  - b) Personnel Monitoring shall be conducted according to OSHA and National Institute for Occupational Safety and Health (NIOSH) regulations and guidance.
  - c) On site Area Monitoring shall consist of continuous real-time monitoring performed immediately adjacent to any waste excavation areas, treatment areas, and any other applicable areas when work is occurring in RA areas of the Site. Measurements shall be taken in the breathing zones of personnel and immediately upwind and downwind of the work areas. Equipment shall include the following, at a minimum: organic vapor meter, explosion meter, particulate monitoring equipment, and on-site windsock.
  - d) Perimeter Monitoring shall consist of monitoring airborne contaminants at the perimeter of the site to determine whether harmful concentrations of toxic constituents

are migrating off-site. Appropriate approved methods shall be used for sampling and analysis of air at the site perimeter. The results of the perimeter air monitoring and available information on estimates of wind direction shall be used to assess the potential for off-site exposure to toxic materials. The air monitoring program shall include provisions for notifying nearby residents, local, state and federal agencies in the event that unacceptable concentrations of airborne toxic constituents are migrating off-site. The Settling Defendants shall report detection of unacceptable levels of airborne contaminants to EPA. Unacceptable levels will be defined in the Construction Health & Safety/ Contingency Plan.

- vi. Plans for dust suppression in areas of RA. The policy, "no visible dust" shall be used as the trigger for performing dust suppression.
- f. A Sampling and Analysis Plan (SAP) that shall describe soil sampling efforts to determine the extent of STF soil hot spots during remediation, to determine treatment (solidification) mixtures; to determine the area of the site to be capped during RA; and long-term monitoring of site groundwater during RA.
- g. The Settling Defendants shall prepare a Transport and Disposal Plan in accordance with the Off-site Rule for contaminated material that is to be removed, transported and disposed at an approved RCRA facility. The Settling Defendants shall provide written notice prior to any out-of-state shipment of waste material as set forth in Section VI, Paragraph 16 of the CD.

#### B. Remedial Action Construction

The Settling Defendants shall implement the RA as detailed in the accepted final design. The following activities shall be completed in constructing the RA.

##### 1. Preconstruction Conference

A Preconstruction Conference shall be held after selection of the Construction Contractor but before initiation of construction. This conference shall include the Settling Defendants and federal, state and local government agencies and shall:

- a. Define the roles, relationships, and responsibilities of all parties involved in the RA;
- b. Review methods for documenting and reporting inspection data;
- c. Review methods for distributing and storing documents and reports;
- d. Review work area security and safety protocols;
- e. Review the Construction Schedule;
- f. Conduct a site reconnaissance to verify that facilitate understanding of the design criteria and the plans and specifications are understood and to review material and equipment storage locations.

The Settling Defendants shall document the Preconstruction Conference, including names of people in attendance, issues discussed, clarifications made, special instructions issued, etc. The Settling Defendant shall transmit the minutes of the meeting to EPA and all parties in attendance.

## 2. Prefinal Construction Inspection

Upon preliminary completion of the RA, the Settling Defendants shall notify EPA for the purpose of conducting a Prefinal Construction Inspection. Participants should include the Project Coordinators, Supervising Contractor, Construction Contractor, and EPA. The Prefinal Inspection shall consist of a walk-through inspection of the entire project site. The objective of the inspection is to determine whether the construction is complete and consistent with the CD, the SOW and the ROD. Any outstanding construction items discovered during the inspection shall be identified and noted. Additionally, treatment equipment shall be operationally tested by the Settling Defendants. The Settling Defendants shall state that the equipment has performed to effectively meet the



purpose and intent of the specifications. Retesting shall be completed where deficiencies are revealed. The Prefinal Construction Inspection Report shall be submitted by the Settling Defendants which outlines the outstanding construction items, actions required to resolve the items, completion date for the items, and an anticipated date for the Final Inspection.

3. Final Construction Inspection

Upon completion of all outstanding construction items, the Settling Defendants shall notify EPA for the purpose of conducting a Final Construction Inspection. The Final Construction Inspection shall consist of a walk-through inspection of the entire project site. The Prefinal Construction Inspection Report shall be used as a check list with the Final Construction Inspection focusing on the outstanding construction items identified in the Prefinal Construction Inspection. All tests that were originally unsatisfactory shall be conducted again. Confirmation shall be made during the Final Construction Inspection that all outstanding items have been resolved. Any outstanding construction items discovered during the inspection still requiring correction shall be identified and noted. If any items are still unresolved, the inspection shall be considered to be a Prefinal Construction Inspection requiring another Prefinal Construction Inspection Report and subsequent Final Construction Inspection.

4. O & M Plan.

Within thirty (30) days of the Prefinal Construction Inspection, the Settling Defendants shall submit the draft O & M Plan as described in Task III. The final O & M plan shall incorporate comments submitted on the draft plan.

5. Remedial Action Report

As provided in Section XIV of the CD, within 90 days after the Settling Defendants conclude that the RA has been fully performed and the Performance Standards have been attained to the maximum extent practicable, the Settling Defendants shall so certify to the United States. If after the Final Construction Inspection the Settling Defendants believe that the RA has been fully performed and the Performance Standards have been attained to the maximum extent practicable, the Settling Defendants shall submit a RA Report to EPA in

accordance with Section XIV, paragraph 48 of the CD. The RA Report shall include the following:

- a. A copy of the Final Construction Report which shall include:
  - (1). Brief description of how outstanding items noted in the Prefinal Inspection were resolved;
  - (2). Explanation of modifications made during the RA to the original RD Work Plan and plans and specifications and why these changes were made;
  - (3). As-built drawings.
- b. Synopsis of the work defined in this SOW and a demonstration in accordance with the Performance Standards Verification Plan that Performance Standards have been achieved;
- c. Certification that the RA has been completed in full satisfaction of the requirements of the CD, and;
- d. A description of how the Settling Defendants will implement any remaining part of the EPA accepted Operation and Maintenance Plan.

After EPA review, the Settling Defendants shall address all comments and submit a revised report. As provided in Section XIV, paragraph 48 of the CD, the RA shall not be considered complete until EPA accepts the RA Report.

TASK III - OPERATION AND MAINTENANCE

Operation and Maintenance (O&M) shall be performed in accordance with the accepted O&M Plan. The O&M Plan shall cover the operation of the treatment systems and post remedial action activities including groundwater monitoring, and cap inspection and maintenance.

A. Operations and Maintenance Plan.

The Settling Defendants shall submit an O&M Plan for EPA review and approval which shall include the following elements where applicable:

1. Start-up procedures, operation, troubleshooting, training, and evaluation activities that shall be monitored by the Settling Defendants.
2. Equipment start-up and operator training;
  - a. Technical specifications governing treatment systems;
  - b. Requirements for providing appropriate service visits by experienced personnel to supervise the installation, adjustment, start-up and operation of the systems; and,
  - c. Schedule for training personnel regarding appropriate operational procedures once start-up has been successfully completed.
3. Description of normal operation and maintenance;
  - a. Description of tasks required for system operation;
  - b. Description of tasks required for system maintenance;
  - c. Description of prescribed treatment or operating conditions; and
  - d. Schedule showing the required frequency for each O&M task.
4. Description of potential operating problems;
  - a. Description and analysis of potential operating problems;
  - b. Sources of information regarding problems; and

- c. Common remedies or anticipated corrective actions.
- 5. Description of routine monitoring and laboratory testing;
  - a. Description of groundwater monitoring tasks;
  - b. Description of required laboratory tests and their interpretation;
  - c. Required QA/QC; and
  - d. Schedule of monitoring frequency and date, if appropriate, when monitoring may cease.
- 6. Description of alternate O&M;
  - a. Should system fail, alternate procedures to prevent undue hazard; and
  - b. Analysis of vulnerability and additional resource requirements should a failure occur.
- 7. Safety Plan;
  - a. Description of precautions to be taken and required health and safety equipment, etc., for site personnel protection, and
  - b. Safety tasks required in the event of systems failure.
- 8. Description of equipment;
  - a. Equipment identification;
  - b. Installation of monitoring components;
  - c. Maintenance of site equipment; and
  - d. Replacement schedule for equipment and installation components.
- 9. Records and reporting;
  - a. Daily operating logs;
  - b. Laboratory records;
  - c. Records of operating cost;
  - d. Mechanism for reporting emergencies;

- e. Personnel and Maintenance Records; and
- f. Monthly reports to State/Federal Agencies.

#### TASK IV - PERFORMANCE MONITORING

Performance monitoring shall be conducted to ensure that all Performance Standards are met.

##### A. Performance Standards Verification Plan

The purpose of the Performance Standards Verification Plan is to provide a mechanism to ensure that both meet short-term and long-term Performance Standards for the RA are met. The Settling Defendants shall submit the draft Performance Standards Verification Plan with the Preliminary Design, and the final plan with the Pre-Final/Final Design. If required, the plan will be modified following the completion of construction. Once accepted, the Settling Defendants shall implement the Performance Standards Verification Plan on the accepted schedule. The Performance Standards Verification Plan shall include:

1. The Performance Standards Verification Field Sampling and Analysis Plan that provides guidance for all field work by defining in detail describing the sampling and data gathering methods to be used. The Performance Standards Verification Field Sampling and Analysis Plan shall be written so that a field sampling team unfamiliar with the Site would be able to gather the samples and field information required.
2. The Performance Standards Verification Quality Assurance/Quality Control plan that describes the quality assurance and quality control protocols which will be followed in demonstrating compliance with Performance Standards.
3. Specification of those tasks to be performed by the Settling Defendants to demonstrate compliance with the Performance Standards and a schedule for the performance of these tasks.

TASK V - REPORTSA. Progress Reports

The Settling Defendants shall provide EPA with signed monthly progress reports during the design and construction phases, and semi-annual progress reports for operation and maintenance activities. Progress reports shall be prepared in letter form in the following format:

## PROGRESS REPORT

SITE NAME:

PREPARED BY:

REPRESENTING:

DATE:

REPORTING PERIOD:

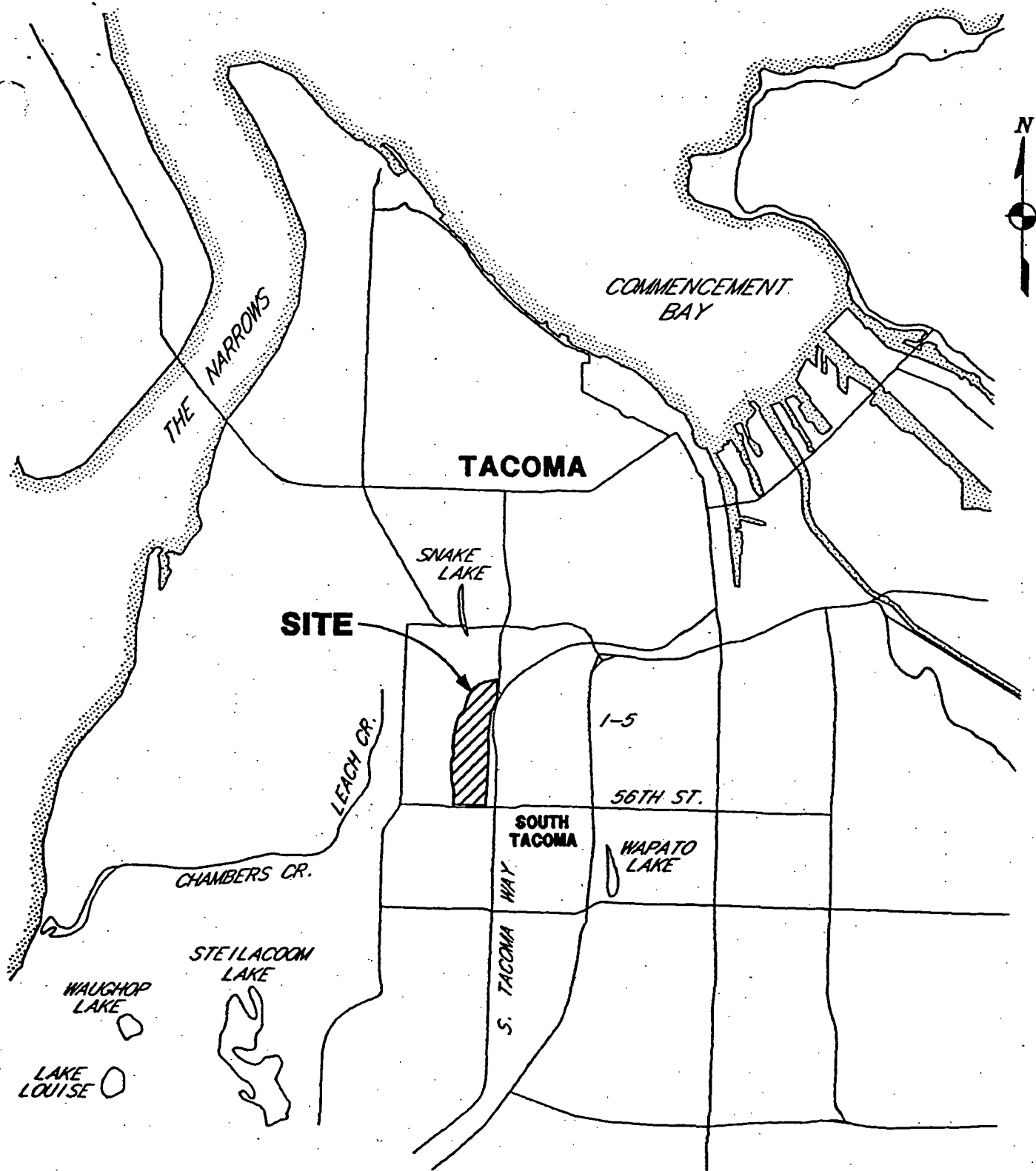
PERCENT COMPLETED: A description and estimate of the percentage of the RD/RA completed;

- a. Progress Made This Reporting Period- Includes problem areas encountered, and recommendations.
- b. Anticipated Problem Areas and Recommended Solutions-Includes technical and scheduling implications.
- c. Problems Resolved- Includes results obtained relating to previously identified problem areas.
- d. Deliverables Submitted- Includes dates of completion; deliverables anticipated to be submitted with net report; reasons due dates for any future deliverable may need to be revised. Delays should be fully explained.
- e. Upcoming Events/Activities Planned- Includes field surveys, meetings, etc., and all major tasks to be performed within the net reporting period.
- f. Key Staffing Changes- Includes consultant, contractor or subcontractor personnel.
- g. Reports- Includes identification of daily reports, inspection reports, laboratory/monitoring data, etc., that are available for review if requested by EPA.

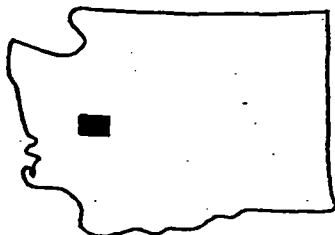
APPENDIX C

SITE MAPS





WASHINGTON



APPROXIMATE SCALE IN MILES

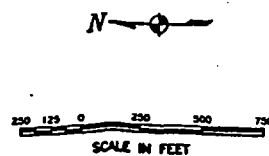
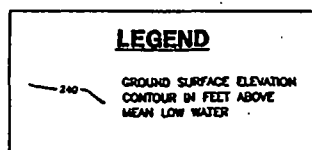
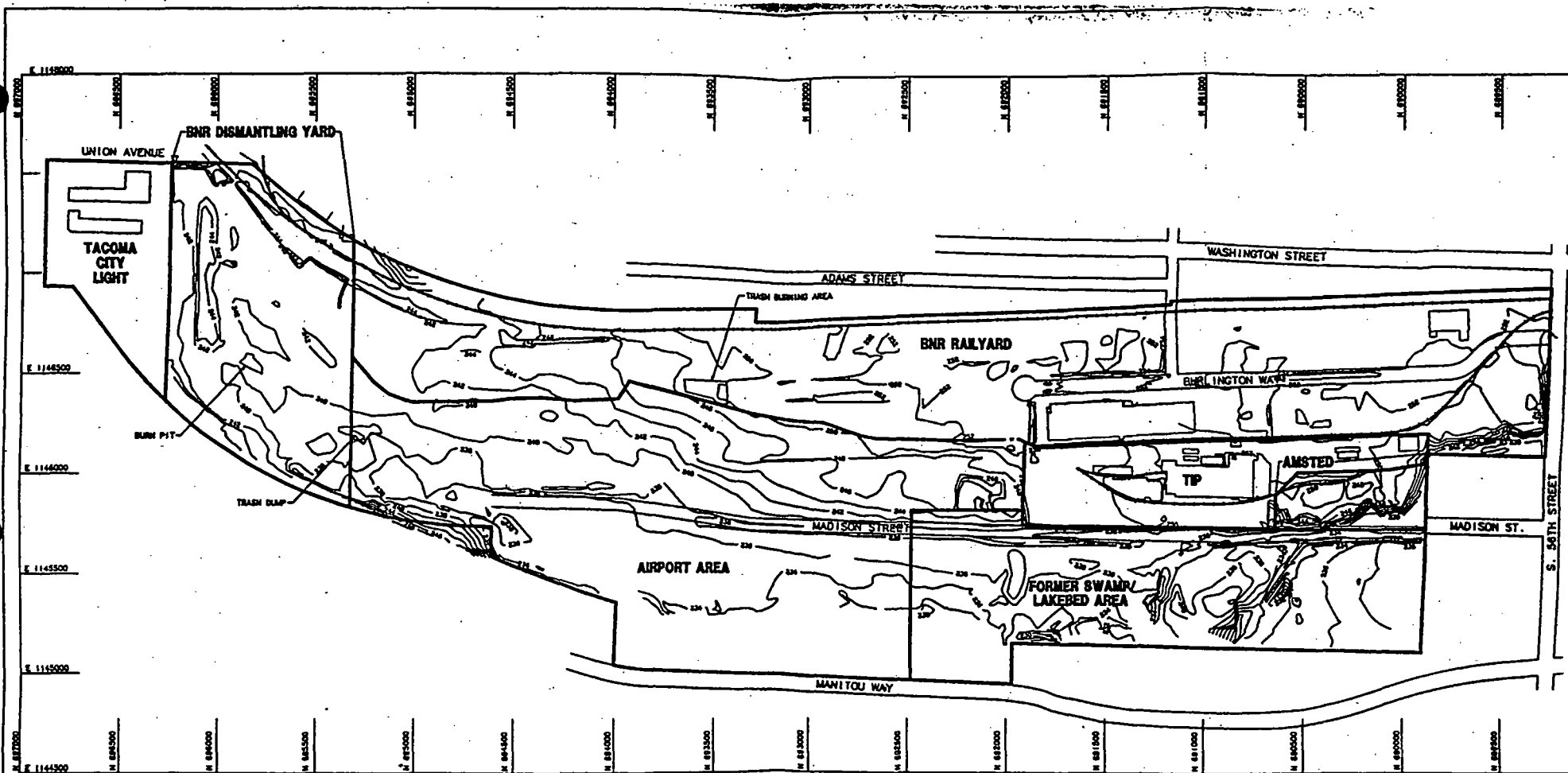
**Kennedy/Jenke Consultants**

SOUTH TACOMA FIELD  
TACOMA, WA

**SITE LOCATION MAP**

916055.19/P2SK191

**FIGURE G-2**



Kennedy/Jenks Consultants

SOUTH TACOMA FIELD  
TACOMA, WA

SITE TOPOGRAPH

916055.19/P2SK18

FIGURE R1-

APPENDIX D

SETTLING DEFENDANTS

1. Burlington Northern Railroad Company
2. BN Leasing Corporation
3. Amsted Industries Incorporated
4. Pioneer Builders Supply, Inc.
5. South Tacoma L.L.C.
6. Atlas Foundry & Machine Company, a Division of TIC United Corp.
7. City of Tacoma, Department of Public Utilities, Light Division

APPENDIX E

OWNER SETTLING DEFENDANTS

1. Burlington Northern Railroad Company
2. BN Leasing Corporation
3. Amsted Industries Incorporated
4. Pioneer Builders Supply, Inc.
5. South Tacoma L.L.C.
6. City of Tacoma, Department of Public Utilities, Light  
Division

## APPENDIX F

For the purposes of this Consent Decree liability shall be divided as follows:

1. Burlington Northern Railroad Company, the BN Leasing Corporation, Amsted Industries Incorporated, and Atlas Foundry & Machine Company, a Division of TIC United Corp., shall be jointly and severally liable for all Work required in Paragraph 14(b)(i) of this Consent Decree and payment of associated Future Response Costs (excluding Interim Response Costs) required by Section XVI (Reimbursement of Response Costs) of this Consent Decree;

2. Burlington Northern Railroad Company and Pioneer Builders Supply, Inc., shall be jointly and severally liable for all Work required in Paragraph 14(b)(ii) of this Consent Decree and payment of associated Future Response Costs (excluding Interim Response Costs) required by Section XVI (Reimbursement of Response Costs) of this Consent Decree;

3. The City of Tacoma, Department of Public Utilities, Light Division, shall be liable for all Work required in Paragraph 14(b)(iii) of this Consent Decree and payment of associated Future Response Costs (excluding Interim Response Costs) required by Section XVI (Reimbursement of Response Costs) of this Consent Decree; and

4. Burlington Northern Railroad Company, the BN Leasing Corporation, Amsted Industries Incorporated, Pioneer Builders Supply, Inc., City of Tacoma, Department of Public Utilities, Light Division, and Atlas Foundry & Machine Company, a Division of TIC United Corp., shall be jointly and severally liable for payment of all Past Response Costs and Interim Response Costs required by Section XVI (Reimbursement of Response Costs) of this Consent Decree.

5. The South Tacoma L.L.C. shall implement institutional controls and provide access as required by Section VII of the SOW and Paragraph 27 of this Consent Decree, and retain records as required by Section XXV (Retention of Records) of this Consent Decree.

6. Amsted Industries Incorporated, the Burlington Northern Railroad Company, BN Leasing Corporation, South Tacoma L.L.C., and Pioneer Builders Supply Inc., shall be responsible for implementing institutional controls as required by Section VII of the SOW and Paragraph 27 of this Consent Decree on all property within the Site including the Wetlands/Drainage Channel area of the Site as set forth below:

Amsted Industries Incorporated Property Subject to the  
Institutional Control Requirements of Section VII of  
the SOW and Paragraph 27 of the Consent Decree

SITE "C", AS SHOWN ON THAT CERTAIN SURVEY OF A PORTION OF SECTION 24, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON, FILED FOR RECORD DECEMBER 31, 1987 UNDER AUDITOR'S NO. 8712310491, BEING DESCRIBED AS FOLLOWS:

A PARCEL OF LAND IN THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 20 NORTH, RANGE 2 EAST, OF THE W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MONUMENT MARKING THE INTERSECTION OF SOUTH 49TH STREET AND THE WEST LINE OF THE PLAT OF EXCELSIOR PARK TRACTS, ACCORDING TO PLAT RECORDED IN BOOK 2 OF PLATS AT PAGE 128; THENCE ALONG SAID WEST LINE SOUTH  $01^{\circ}22'00''$  WEST 406.96 FEET TO THE SOUTHWEST CORNER OF TRACT 17 OF SAID PLAT; THENCE ALONG THE SOUTH LINE OF SAID TRACT SOUTH  $88^{\circ}35'24''$  EAST 955.28 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 17; THENCE SOUTH  $01^{\circ}36'42''$  WEST 60.00 FEET; THENCE ALONG THE NORTH LINE OF THE JOHN N. SON DONATION LAND CLAIM SOUTH  $88^{\circ}13'39''$  EAST 0.76 FEET; THENCE ALONG THE EAST LINE OF MADISON STREET AS DEEDED UNDER AUDITOR'S NO. 98946, BEING ALSO THE EAST LINE OF THAT PARCEL DEEDED UNDER AUDITOR'S NO. 86267; THENCE SOUTH  $00^{\circ}53'25''$  WEST 567.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH  $00^{\circ}53'25''$  WEST 758.78 FEET; THENCE ALONG THE NORTH LINE OF THE PLAT OF HUNT'S PRAIRIE ADDITION AS RECORDED IN BOOK 2 OF PLATS AT PAGE 90, SOUTH  $88^{\circ}23'44''$  EAST 344.81 FEET; THENCE NORTH  $01^{\circ}34'26''$  EAST 30.00 FEET; THENCE NORTH  $09^{\circ}12'44''$  WEST 177.90 FEET; THENCE NORTH  $01^{\circ}33'19''$  WEST 451.35 FEET; THENCE NORTH  $46^{\circ}43'33''$  WEST 156.56 FEET; THENCE NORTH  $88^{\circ}38'24''$  WEST 179.05 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, UNDER AND ACROSS THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE MONUMENT MARKING INTERSECTION OF THE CENTERLINES OF PROCTOR AND SOUTH 56TH STREETS IN THE CITY OF TACOMA, PIERCE COUNTY, WASHINGTON; THENCE ALONG THE CENTER LINE OF PROCTOR STREET NORTH  $01^{\circ}34'26''$  EAST 644.90 FEET TO THE NORTH LINE OF THE PLAT OF HUNT'S PRAIRIE ADDITION, ACCORDING TO PLAT RECORDED IN BOOK 2 OF PLATS AT PAGE 90, AND THE TRUE POINT OF BEGINNING OF THIS EASEMENT; THENCE ALONG SAID NORTH LINE NORTH  $88^{\circ}23'44''$  WEST 15.00 FEET; THENCE NORTH  $01^{\circ}34'26''$  EAST 30.00 FEET; THENCE NORTH  $09^{\circ}12'44''$  WEST 177.90 FEET; THENCE NORTH  $01^{\circ}33'19''$  WEST 556.06 FEET; THENCE SOUTH  $88^{\circ}38'24''$  EAST 30.04 FEET; THENCE SOUTH  $01^{\circ}33'19''$  EAST 552.53 FEET; THENCE SOUTH  $09^{\circ}12'44''$  EAST 178.72 FEET; THENCE SOUTH  $01^{\circ}34'26''$  WEST 32.85 FEET; THENCE ALONG THE NORTH LINE OF SAID PLAT OF HUNT'S PRAIRIE NORTH  $88^{\circ}23'44''$  WEST 15.00 FEET TO THE TRUE POINT OF BEGINNING. .0134 STATE PLUS .0025 LOCAL

Burlington Northern Railroad Company Property Subject  
to the Institutional Control Requirements of Section  
VII of the SOW and Paragraph 27 of the Consent Decree



John Bjorkman  
S. Tacoma Field

Legal Description for Burlington Northern Railroad Company's Right of Way Sections 13  
and 14, Township 20 North, Range 2 East W. M., South Tacoma, Pierce County,  
Washington

All of Burlington Northern Railroad Company's 200.0 foot wide right of way, being 100.0 feet wide on each side of said Railroad Company's hereinafter described Main Track centerline, as originally located and constructed upon, over and across the E $\frac{1}{2}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, Township 20 North, Range 2 East Willamette Meridian, Pierce County, Washington, bounded on the Northeast by the East line of said Section 13 and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; also,

An additional 14.0 foot wide strip of land abutting the hereinabove described 200.0 foot wide right of way on the Westerly side, lying between two lines drawn parallel and concentric with and distant, respectively, 100.0 feet and 114.0 feet Westerly from the hereinafter described Main Track centerline, bounded on the Northeast by a line drawn parallel with and distant 30.0 feet West of the East line of said Section 13 and bounded on the South by the South line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; also,

All of said Railroad Company's 66.0 foot wide right of way, being 33.0 feet wide on each side of said Railroad Company's hereinafter described Main Track centerline, as originally located and constructed upon, over and across the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 13, and the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, all in Township 20 North, Range 2 East Willamette Meridian, Pierce County, Washington, bounded on the North by the North line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, and bounded on the South by the South line of said N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 24; also,

All that portion of said Railroad Company's 100.0 foot wide right of way, being 50.0 feet wide on each side of said Railroad Company's hereinafter described Main Track centerline, as originally located and constructed upon, over and across the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 24, Township 20 North, Range 2 East, bounded on the North by the North line of said S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , and bounded on the South by the Easterly extension of the South line of Lot 1 of Burlington Northern Tacoma Industrial Center No. 1, according to the official plat thereof recorded in Book 57 of Plats at Pages 35, 36, and 37, City of Tacoma, Pierce County, Washington.

Main Track Centerline Description

Commencing at the Southeast corner of said Section 24; thence Westerly along the South line of said Section 24 a distance of 334.0 feet to the True Point of Beginning of the Main Track centerline to be described; thence Northwesterly, deflecting 86° 12' to the right, a distance of 7,188.7 feet to a point of curve; thence along a 02° curve concave to the Southeast having a central angle of 48° 58' to the East line of said Section 13 and there terminating.

Those portions of Blocks 1 and 2, Clement's 2nd Addition to the City of Tacoma, and the E½ of Section 13 and the N½NE½ of Section 24, T20N, R2E, W.M., Pierce County, Washington, described as follows, to-wit:

Beginning at the Northeast corner of Lot 12 of the Burlington Northern Railroad Company Tacoma Industrial Center No. 1, according to the plat recorded in Book 57 of Plats, Pages 35, 36 and 37; thence S87°59'37"W a distance of 287.0 feet; thence S02°00'23"E a distance of 137.77 feet; thence S87°59'37"W a distance of 338.0 feet; thence N02°00'23"W along the extension of the West line of Lot 13, said Burlington Northern Railroad Company Tacoma Industrial Center No. 1, to the point of intersection with the North line of the Griffin Wheel Company right-of-way, as now located; thence Westerly along said North line to the point of intersection with the East right-of-way line of Madison Street, as now located and constructed; thence Northerly along said East right-of-way line and extension thereof to the point of intersection with a line drawn concentric with and distant 50.0 feet Southeasterly of, as measured radially to, Union Pacific Railroad Company's (formerly Oregon and Washington Railroad Company's) hereinafter described Main Track centerline; thence Northeasterly along said concentric line to the point of intersection with a line drawn parallel with and distant 1016.47 feet Southerly of, as measured at right angles to, the North line of the NE½ of said Section 13; thence Easterly along said parallel line to the point of intersection with a line drawn parallel with and distant 30.0 feet Westerly of, as measured at right angles to, the East line of said NE½ of Section 13; thence Southerly along said parallel line to the point of intersection with a line drawn parallel with and distant 114.0 feet Northwesterly of, as measured radially to, Burlington Northern Railroad Company's (formerly Northern Pacific Railway Company's) hereinafter described Main Track centerline; thence Southerly parallel with said Burlington Northern Railroad Company's Main Track centerline to the point of intersection with the North line of the SE½SE½ of said Section 13; thence Easterly along said North line of the SE½SE½ to the point of intersection with a line drawn parallel with and distant 24.0 feet Westerly of, as measured at right angles to, said Main Track centerline; thence Southerly parallel with said Main Track centerline to the Point of Beginning.

Oregon and Washington Railroad Company  
Main Track Centerline Description

Commencing at the Southwest corner of the SE½NE½ of said Section 13; thence Westerly a distance of 405.9 feet to the True Point of Beginning of the Main Track centerline to be described; thence Northerly, deflecting 89°50'44" to the right, a distance of 106.0 feet to a point of curvature; thence along a 02°30' curve concave to the Southeast (delta = 50°59') to the point of intersection with a line drawn parallel with and distant 1016.47 feet Southerly of, as measured at right angles to, the North line of the NE½ of said Section 13 and there terminating.

Burlington Northern Railroad Company  
Main Track Centerline Description

Commencing at the Southeast corner of said Section 24; thence Westerly along the South line of said Section 24 a distance of 334.0 feet to the True Point of Beginning of the Main Track centerline to be described; thence Northwesterly, deflecting 86°12' to the right, a distance of 7188.7 feet to a point of tangency; thence along a 02° curve concave to the Southeast (delta = 48°58') to the point of intersection with the East line of said Section 13 and there terminating.

That portion of the ~~WINE~~ of Section 24, T 1 N, R2E, W.M., City of Tacoma, Pierce County, Washington, described as follows, to-wit:

Beginning at the Northwest corner of the J. Neisson Donation Land Claim in said Section 24; thence Southerly along the West line of said Donation Land Claim a distance of 1315.0 feet, more or less, to the Northwest corner of Hunt's Prairie Addition to said City of Tacoma, according to the plat recorded in Book 2 of Plats, Page 90; thence Easterly along the North line of said Hunt's Prairie Addition to the point of intersection with the West right-of-way line of Madison Street, according to the recorded plat thereof; thence Northerly along said West right-of-way line to the point of intersection with the North line of said J. Neisson Donation Land Claim; thence Westerly along said North line a distance of 525.0 feet, more or less, to the Point of Beginning.

Parcel 2 - 151-B ✓

Lots 1 and 2 in Block 1; Lots 1 and 2 in Block 2; Lots 1 through 4, inclusive, in Block 3; Lots 1 through 5, inclusive, in Block 4; Lots 1 through 24, inclusive, in Blocks 5 through 8, inclusive; all in the Mechanics Home Addition to Tacoma, Washington, according to the plat recorded in Book 6 of Plats, Page 40, in the City of Tacoma, Pierce County, Washington; also,

That portion of vacated S. 42nd Street, according to the recorded plat thereof, abutting said Block 4; also,

Those portions of vacated Monroe Street, according to the recorded plat thereof, said S. 42nd Street and alleyways abutting said Blocks 5 through 8, inclusive.

Parcel 2 - 151-C ✓

All that portion of the ~~SINWSE~~ of Section 13, T20N, R2E, W.M., Pierce County, Washington, lying between Madison Street and Manitou Street, as now located and constructed.

Parcel 2 - 151-D ✓

All those portions of Tracts 20 through 25, inclusive, Excelsior Park Tracts, City of Tacoma, Pierce County, Washington, lying Easterly of the East right-of-way line of Manitou Street, as now located and constructed, and Westerly of the West right-of-way line of Madison Street, as now located and constructed.

Parcel 2 - 151-E

All those portions of Tracts 17, 18 and 19, Excelsior Park Tracts, City of Tacoma, Pierce County, Washington, lying Westerly of the West right-of-way line of Madison Street, as now located and constructed, and Easterly of the following described line:

Beginning at a point on the North line of said Tract 19 distant 708.24 feet Westerly of the Northeast corner thereof; thence Southerly along a straight line to a point on the North line of said Tract 18 distant 707.24 feet Westerly of the Northeast corner thereof; thence Southerly along a straight line to a point on the North line of said Tract 17 distant 706.25 feet Westerly of the Northeast corner thereof; thence Southerly along a straight line to a point on the South line of said Tract 17 distant 705.26 feet Westerly of the Southeast corner thereof and there terminating.

EXCEPTING THEREFROM, that portion West of the extension Northerly of the West line of the aforementioned J. Neisson Donation Land Claim.

BN Leasing Corporation Property Subject to the  
Institutional Control Requirements of Section VII of  
the SOW and Paragraph 27 of the Consent Decree

BK 0765PG 1110

**EXHIBIT "A"**

All of Lots 1, 4 through 12, inclusive, and 18 through 25, inclusive, of Burlington Northern Tacoma Industrial Center No.1 according to the official plat thereof recorded in Book 57 of Plats at Pages 35, 36 and 37, City of Tacoma, Pierce County, Washington.

9204150102

Pioneer Builders Supply, Inc., Property Subject to the  
Institutional Control Requirements of Section VII of  
the SOW and Paragraph 27 of the Consent Decree

RECEIVED  
MAY 23 1996

ROBIE G. RUSSELL

ATTORNEY AT LAW

OFFICE OF REGIONAL COUNSEL  
EPA - REGION 10

315 Second Avenue South, Suite 300  
Seattle, Washington 98104  
Facsimile (206) 622-5520  
(206) 622-7050

Licensed in Washington  
and Idaho

Our Reference No.  
7044/0002

May 22, 1996

Ted Yackulic  
Asst. Regional Counsel  
USEPA Region 10  
1200 Sixth Avenue, 15th floor  
Seattle, WA 98101

Re: Property Description and Signatory

Dear Ted:

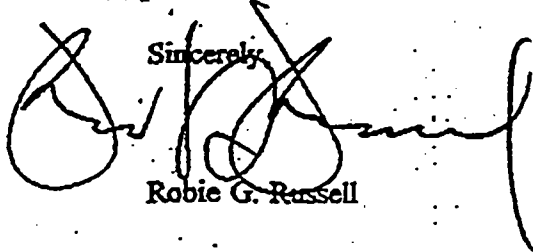
The following is the legal description for the Pioneer property:

Lots 2 and 3, Burlington Northern Tacoma Industrial Center No. 1,  
according to the plat thereof, recorded in Volume 57 of Plats,  
Pages 35 to 37, inclusive in Pierce County, Washington.

The signatory on behalf of Pioneer Builders Supply, Inc., will be its president, Larry James Davis. The correct mailing address for Pioneer is 5401 S. Burlington Way, Tacoma, WA 98409.

If you need additional information, please let me know.

Sincerely,



Robie G. Russell

RGR/mc  
cc: Pioneer Builders Supply

South Tacoma L.L.C. Property Subject to the  
Institutional Control Requirements of Section VII of  
the SOW and Paragraph 27 of the Consent Decree



**PARCEL A:**

Site "A", as shown on SURVEY filed for record December 31, 1987 under Auditor's No. 8712310491 and described as follows:

A parcel of land in the Northeast quarter of SECTION 24, TOWNSHIP 20 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington, more particularly described as follows:

Commencing at the monument marking the intersection of South 49th Street and the West line of the plat of THE EXCELSIOR PARK TRACTS, according to Plat recorded in Book 2 of Plats at Page 128, in Pierce County, Washington; thence along said West line South  $01^{\circ}22'00''$  West 406.96 feet to the Southwest corner of Tract 17 of said plat; thence along the South line of said tract South  $88^{\circ}35'24''$  East 955.28 feet to the Southeast corner of said Tract 17; thence along the East line of said Tract 17 North  $01^{\circ}36'42''$  East 13.00 feet to the true point of beginning of this description; thence continuing along the East line of Tracts 17, 18 and 19 of said plat of EXCELSIOR PARK TRACTS North  $01^{\circ}36'42''$  East 712.03 feet; thence along the centerline of vacated South 48th Street as described in Pierce County Superior Court Case No. 252514 South  $88^{\circ}35'24''$  East 376.37 feet; thence along the East line of Tract 26 of said plat South  $01^{\circ}36'42''$  West 641.41 feet; thence North  $88^{\circ}13'39''$  West 376.37 feet to the true point of beginning.

**PARCEL B:**

That portion of Tract 27 in the Plat of EXCELSIOR PARK TRACTS, according to Plat recorded in Book 2 of Plats at Page 128, in Pierce County, Washington, and of the adjoining portion of South 48th Street as vacated in Pierce County Superior Court Case No. 252514 in the Northeast quarter of SECTION 24, TOWNSHIP 20 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington, more particularly described as follows:

Commencing at the monument marking the intersection of South 49th Street and the West line of the plat of EXCELSIOR PARK TRACTS; thence along said West line North  $01^{\circ}22'32''$  East 245.07 feet to the intersection of the Westerly extension of the centerline of said vacated South 48th Street; thence along said extension and along said vacated centerline South  $88^{\circ}35'24''$  East 1334.40 feet to the Northerly extension of the West line of said Tract 27 and the true point of beginning; thence along the West line of said Tract 27, South  $01^{\circ}36'42''$  West 714.41 feet to the South line of said Tract 27; thence along said South line South  $88^{\circ}13'39''$  East 58.29 feet to the West line of the plat of BURLINGTON NORTHERN TACOMA INDUSTRIAL CENTER NO. 1, according to Plat recorded in Book 57 of Plats at Pages 35 through 37, inclusive, in Pierce County, Washington; thence along said West line and extension thereof, North  $02^{\circ}00'26''$  West 716.05 feet to the centerline of said vacated South 48th Street; thence along said centerline North  $88^{\circ}35'24''$  West 13.09 feet to the true point of beginning.

## PARCEL C:

Site "B", as shown on SURVEY filed for record December 31, 1987 under Auditor's No. 8712310491 and described as follows:

A parcel of land in the Northeast quarter of SECTION 34, TOWNSHIP 26 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington, more particularly described as follows:

Commencing at the monument marking the intersection of South 49th Street and the West line of the plat of THE KICKLATOR PARK TRACTS, according to Plat recorded in Book 2 of Plats at Page 128, in Pierce County, Washington; thence along said West line South  $01^{\circ}22'00''$  West 405.96 feet to the Southwest corner of Tract 17 of said plat; thence along the South line of said tract South  $88^{\circ}15'24''$  East 955.28 feet to the Southeast corner of said Tract 17 and the true point of beginning of this description; thence along the East line of said Tract 17 North  $01^{\circ}36'42''$  East 13.00 feet; thence South  $88^{\circ}13'39''$  East 276.37 feet; thence along the East line of Tract 26 of said plat South  $01^{\circ}36'42''$  West 73.00 feet; thence along the North line of the JOHN HETISSON DONATION LAND CLAIM South  $88^{\circ}13'39''$  East 58.29 feet; thence along the West line of the plat of BURLINGTON NORTHERN TACOMA INDUSTRIAL CENTER NO. 1, according to Plat recorded in Book 57 of Plats at Pages 35 to 37, inclusive, in Pierce County, Washington, South  $02^{\circ}00'26''$  East 564.84 feet; thence North  $88^{\circ}38'24''$  West 462.42 feet; thence along the East line of Madison Street as deeded under Auditor's No. 989496, being also the East line of that Parcel deeded under Auditor's No. 286267, North  $00^{\circ}53'25''$  East 567.00 feet; thence along the North line of the HETISSON DONATION LAND CLAIM North  $88^{\circ}13'39''$  West 0.76 feet; thence North  $01^{\circ}36'42''$  East 60.00 feet to the true point of beginning.

446589-3C

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## PARCEL D:

Site "D", as shown on SURVEY filed for record December 31, 1987 under Auditor's No. 8712310491 and described as follows:

A parcel of land in the Northeast quarter of SECTION 24, TOWNSHIP 20 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington, more particularly described as follows:

Commencing at the monument marking the intersection of South 49th Street and the West line of the plat of EXCELSIOR PARK TRACTS, according to Plat recorded in Book 2 of Plats at Page 128, in Pierce County, Washington; thence along said West line South  $01^{\circ}22'00''$  West 406.96 feet to the Southwest corner of Tract 17 of said plat; thence along the South line of said lot South  $88^{\circ}35'24''$  East 955.28 feet to the Southeast corner of said Tract 17; thence South  $01^{\circ}36'42''$  West 60.00 feet; thence along the North line of the JOHN NEISSON DONATION LAND CLAIM South  $88^{\circ}13'39''$  East 0.76 feet; thence along the East line of Madison Street as deeded under Auditor's No. 98946, being also the East line of that parcel deeded under Auditor's No. 286267, South  $00^{\circ}53'25''$  West 567.00 feet; thence South  $88^{\circ}38'24''$  East 179.05 feet to the true point of beginning; thence continuing South  $88^{\circ}38'24''$  East 283.37 feet; thence along the West line of the plat of BURLINGTON NORTHERN TACOMA INDUSTRIAL CENTER NO. 1, according to Plat recorded in Book 57 of Plats at Pages 35 to 37, inclusive, in Pierce County, Washington, South  $02^{\circ}00'26''$  East 482.25 feet; thence North  $88^{\circ}38'24''$  West 176.01 feet; thence North  $01^{\circ}33'19''$  West 177.33 feet; thence North  $45^{\circ}43'33''$  West 156.56 feet to the true point of beginning.

446689-3C

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## PARCEL 2:

Site "E", as shown on SURVEY filed for record December 31, 1987 under Auditor's No. 8712310491 and described as follows:

A parcel of land in the Northeast quarter of SECTION 24, TOWNSHIP 20 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington, more particularly described as follows:

Commencing at the monument marking the intersection of South 49th Street and the West line of the plat of EXCELSIOR PARK TRACTS, according to Plat recorded in Book 2 of Plats at Page 128, in Pierce County, Washington; thence along said West line South  $01^{\circ}22'00''$  West 406.96 feet to the Southwest corner of Tract 17 of said plat; thence along the South line of said lot South  $88^{\circ}35'24''$  East 955.28 feet to the Southeast corner of said Tract 17; thence South  $01^{\circ}36'42''$  West 60.00 feet; thence along the North line of the JOHN NELSSON DONATION LAND CLAIM South  $88^{\circ}13'39''$  East 0.76 feet; thence along the East line of Madison Street as deeded under Auditor's No. 98946, being also the East line of that parcel deeded under Auditor's No. 286267, South  $00^{\circ}53'25''$  West 567.00 feet; thence South  $88^{\circ}38'24''$  East 462.42 feet; thence along the West line of the plat of BURLINGTON NORTHERN TACOMA INDUSTRIAL CENTER NO. 1, according to Plat recorded in Book 57 of Plats at Pages 35 to 37, inclusive, in Pierce County, Washington, South  $02^{\circ}00'26''$  East 482.25 feet to the true point of beginning; thence continuing South  $02^{\circ}00'26''$  East 280.00 feet; thence along the North line of the plat of HUNT'S PRAIRIE ADDITION, according to Plat recorded in Book 2 of Plats at Page 90, in Pierce County, Washington, North  $88^{\circ}22'38''$  West 141.16 feet; thence North  $88^{\circ}23'44''$  West 15.00 feet; thence North  $01^{\circ}34'26''$  East 30.00 feet; thence North  $09^{\circ}12'44''$  West 177.90 feet; thence North  $01^{\circ}33'19''$  West 74.02 feet; thence South  $88^{\circ}38'24''$  East 176.01 feet to the true point of beginning.

END OF EXHIBIT A

446689-3C

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APPENDIX G

RESERVATION OF ACCESS EASEMENT AND RESTRICTIONS ON USE

This document contains language that shall be included in a deed or other instrument transferring a fee simple or other title interest in real property described in Appendix F of this Consent Decree. The recital section of this document shall be placed in the recital section of the deed or other instrument and the restrictions and reservations shall be placed in the operative section of the deed or other instrument. Settling Defendants may propose subject to EPA approval and in accordance with Section XI (EPA Approval of Plans and Other Submissions) of the Consent Decree to use alternative language.

I. RECITALS

WITNESSETH:

WHEREAS, Grantor is the owner of real property located in Pierce County, Washington and legally described in ATTACHMENT A hereto (the "Property");

WHEREAS, the Property is part of the South Tacoma Field Operable Unit of the Commencement Bay South Tacoma Channel Superfund Site ("STF" or "Site") which the United States Environmental Protection Agency ("EPA") placed on the National Priorities List, 40 C.F.R. Part 300, Appendix B, as published in the Federal Register on September 8, 1983, 48 Fed. Reg. 40685;

WHEREAS, in a Consent Decree by and between the United States of America and Burlington Northern Railroad Company, BN Leasing Corporation, Amsted Industries Incorporated, Pioneer Builders Supply, Inc., South Tacoma L.L.C., Atlas Foundry & Machine Company, a Division of TIC United Corp., and the City of Tacoma, Department of Public Utilities, Light Division, dated \_\_\_\_\_, 1996, the parties agreed to conduct a Remedial Action, as defined in the Consent Decree, but as used herein to include also Operation and Maintenance as defined in the Consent Decree (herein together "Remedial Action"), that is generally described as follows :

Excavation and solidification of heavily contaminated soils; excavation and incineration or off-site disposal of certain soils contaminated with PCBs; excavation, consolidation, and on-site capping of certain contaminated soils; ground water monitoring in selected areas; installation of additional ground water monitoring wells in selected areas and monitoring of ground water; and, if necessary, implementation of air sparging and in situ vapor extraction of ground water; and operations and maintenance.

WHEREAS, the parties have agreed: (a) to reserve to the Grantor a permanent right of access over the Property for the purpose of implementing, facilitating, and monitoring the scope of the Remedial Action; and (b) to impose on the Property use restrictions as covenants that the parties intend to run with the land and to be binding upon the successors, transferees and assigns of the Grantee for the purpose of implementing, facilitating, and monitoring the scope of the Remedial Action;

WHEREAS, Grantor intends to cooperate fully with Grantee and EPA in the implementation of all response actions at the Site.

## II. RESTRICTIONS AND RESERVATIONS.

1. Purpose: It is the purpose of these restrictions and reservations to ensure that the Property will not be used in a manner that will cause a failure of the Remedial Action and to reserve and retain for the Grantor the right to implement, facilitate, and monitor the Remedial Action to assure that the Property will be used only for purposes which are compatible with the Remedial Action.

2. Restrictions on Use: Grantee, on behalf of itself, its successors and assigns, in consideration of this [insert name of instrument] hereby covenants that use of the Property shall be restricted as follows:

- a. Unless approved by EPA, the Property shall not be used for residential purposes.
- b. Unless approved by EPA, no action shall be taken or suffered which may (i) expose contaminated soil to the environment; or (ii) disturb the integrity or effectiveness of any surface cap on the Property where the disturbance causes the release or threatened release to the environment of hazardous substances in excess of Site cleanup standards regardless of whether such cap was established as a requirement of the ROD..
- c. Unless approved by EPA, groundwater from the restricted use area of the Pioneer Builders Supply Property, as determined during Remedial Design, shall not be used as a drinking water source until groundwater cleanup levels are achieved as defined in Table 9-4 of the ROD.
- d. At least 30 days prior to any conveyance of a title interest in the Property, the owner of the Property shall give written notice to the grantee of the Consent Decree and of the access obligations and use restrictions therein and shall give written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee.

The parties intend these restrictions to run with the land and to be binding upon the Grantee and its successors, transferees, and assigns for the benefit of [insert name of owner of real property described in Appendix F of the Consent Decree].

3. Reservation of Environmental Protection Easement:

Grantor hereby reserves and retains for itself and its successors and assigns, a non-exclusive, perpetual easement to enter on the Property at reasonable times and in a reasonable manner. The purposes of such access are:

- a. implementing the Remedial Action as defined in the Consent Decree;
- b. Verifying any data or information submitted to the EPA pursuant to the Consent Decree;
- c. Verifying that no action is being taken on the Property in violation of the terms of this [insert name of instrument]; and
- d. Monitoring the Remedial Action and conducting investigations related to the Remedial Action including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples.

4. No Public Access and Use: No right of access or use by the general public to any portion of the Property is intended by the parties or is conveyed by this [insert name of instrument].

5. Enforcement: The Grantor hereby reserves and retains for itself and its successors, and assigns an irrevocable, permanent, and continuing right to enforce the terms of this [insert name of instrument] by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity. Enforcement of the terms of this instrument shall be at the discretion of the Grantor, and any forbearance, delay or omission to exercise its rights under this instrument shall not be deemed to be a waiver by the Grantor of such term or any subsequent breach of the same or any other term, or of any of the rights of the Grantor under this [insert name of instrument].

6. Third Party Beneficiary: The Grantor on behalf of itself and its successors and assigns, and the Grantee on behalf of itself and its successors, transferees, and assigns, hereby agree that the EPA and the [insert name of owner of real property described in Appendix F of the above-referenced Consent Decree] shall be third party beneficiaries of all the benefits and rights reserved and retained by the Grantor in this [insert name of instrument].

7. Waiver of Certain Defenses: Grantee and its successors, transferees, and assigns hereby waive any defense of laches, estoppel, or prescription.

8. Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor has a good and lawful right and power to reserve and retain this [insert name of instrument].



9. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other under this [insert name of instrument] shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Controlling Law: The interpretation and performance of this [insert name of instrument] shall be governed by the laws of the United States or, if there is no applicable federal law, by the law of the State of Washington.

11. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this [insert name of instrument] shall be liberally construed in favor of the restrictions and reservations to effect the purposes of this [insert name of instrument] and the policy and purpose of CERCLA, 42 U.S.C. § 9601 et seq. If any provision of this [insert name of instrument] is found to be ambiguous, an interpretation consistent with the purpose of this [insert name of instrument] that would render the provision valid shall be favored over any interpretation that would render it invalid.

12. Severability: If any provision of this [insert name of instrument], or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this [insert name of instrument], or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

13. Entire Agreement: This [insert name of instrument] sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

14. Reserved Rights of Grantee: Grantee hereby reserves unto itself, its successors, transferees, and assigns all rights and privileges in and to the use of the Property that are not incompatible with the exercise of the restrictions on use and reservation of an environmental protection easement reserved in this [insert name of instrument].

15. Joint Obligation: If there are two or more parties identified as Grantor or Grantee herein, the obligations imposed by this [insert the name of the instrument] upon them shall be joint and several.

16. Successors: The Grantor and Grantee intend that the covenants, terms, conditions, and restrictions of this [insert

name of instrument] shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this [insert name of instrument] are freely assignable, subject to the notice provisions hereof.

17. Captions: The captions in this [insert the name of the instrument] have been inserted solely for convenience of reference and are not a part of this [insert the name of the instrument] and shall have no effect upon construction or interpretation.

18. Counterparts: The parties may execute this [insert the name of the instrument] in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

APPENDIX H

ENVIRONMENTAL PROTECTION RESTRICTIVE COVENANT AND ACCESS EASEMENT

AFTER RECORDING,  
PLEASE RETURN TO:

ATTN:  
PHONE:

ENVIRONMENTAL PROTECTION RESTRICTIVE COVENANT AND ACCESS EASEMENT

This Environmental Protection Restrictive Covenant and Access Easement ("Easement") is made this \_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by and between \_\_\_\_\_ ("Grantor") and \_\_\_\_\_ ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of real property located in Pierce County, Washington and legally described in EXHIBIT A hereto (the "Property");

WHEREAS, Grantee is the owner of real property located in Pierce County, Washington and legally described in EXHIBIT B hereto that is adjacent, or in the vicinity of, the Property.

WHEREAS the Property is part of the South Tacoma Field Operable Unit of the Commencement Bay South Tacoma Channel Superfund Site ("STF" or "Site") which the United States Environmental Protection Agency ("EPA") placed on the National Priorities List; 40 C.F.R. Part 300, Appendix B, as published in the Federal Register on September 8, 1983, 48 Fed. Reg. 40685;

WHEREAS, in a Consent Decree by and between the United States of America and Burlington Northern Railroad Co., BN Leasing Corporation, Amsted Industries Incorporated, Pioneer Builders Supply, Inc., South Tacoma L.L.C., Atlas Foundry & Machine Company, a Division of TIC United Corp., and the City of Tacoma, Department of Public Utilities, Light Division, dated \_\_\_\_\_, 1996, the parties agreed to conduct a Remedial Action, as defined in the Consent Decree, but as used herein to include also Operation and Maintenance as defined in the Consent Decree (herein together "Remedial Action"), that is generally described as follows :

Excavation and solidification of heavily contaminated soils; excavation and incineration or off-site disposal of certain soils contaminated with PCBs; excavation, consolidation, and on-site capping of certain moderately contaminated soils; ground water monitoring in selected areas; installation of additional ground water monitoring wells in selected areas and monitoring of ground water; and, if necessary, implementation of air sparging and in situ vapor extraction of ground water; and operations and maintenance.

WHEREAS the Grantor has agreed: (a) to grant a permanent right of access over the Property to the Grantee for the purpose of implementing, facilitating, and monitoring the scope of the Remedial Action; and (b) to impose on the Property use restrictions as covenants that the parties intend to run with the land and to be binding upon the the Grantor and its successors, transferees, and assigns for the benefit of the Grantee and its successors, transferees, and assigns for the purpose of implementing, facilitating, and monitoring the scope of the Remedial Action.

WHEREAS Grantor intends to cooperate fully with Grantee and EPA in the implementation of all response actions at the Site.

NOW, therefore:

1. Purpose: It is the purpose of this Easement to give the Grantee the right to implement and/or monitor the Remedial Action to assure that the Property will be used only for purposes which are compatible with the Remedial Action and to ensure that the Property will not be used in a manner that will cause a failure of the Remedial Action.

2. Grant of Restrictive Covenants, Conditions, and Restrictions: Grantor, on behalf of itself, its successors and assigns, in consideration of execution of a Consent Decree, executed consistent with this Easement, and in consideration of receipt of a reciprocal Environmental Protection Restrictive Covenant and Access Easement, hereby covenants that the use of the Property is restricted as follows:

- a. Unless approved by EPA, the Property shall not be used for residential purposes.
- b. Unless approved by EPA, no action shall be taken or suffered which may (i) expose contaminated soil to the environment; or (ii) disturb the integrity or effectiveness of any surface cap on the Property where the disturbance causes the release or threatened release to the environment of hazardous substances in excess of Site cleanup standards regardless of whether such cap was established as a requirement of the ROD.
- c. Unless approved by EPA, groundwater from the restricted use area of the Pioneer Builders Supply Property, as determined during Remedial Design, shall not be used as a drinking water source until groundwater cleanup levels are achieved as defined in Table 9-4 of the ROD.
- d. At least 30 days prior to any conveyance of a title interest in the Property, the owner of the Property shall give written notice of the

Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee.

The Parties intend these restrictive covenants, conditions, and restrictions to run with the land and to be binding upon the Grantor and its successors, transferees, and assigns for the benefit of the Grantee and its successors, transferees, and assigns.

3. Environmental Protection Access Easement: Grantor on behalf of itself and its successors, transferees, and assigns hereby conveys and quit claims to the Grantee and its successors, transferees, and assigns a non-exclusive, perpetual easement to enter the Property at reasonable times and in a reasonable manner. The purposes of such access are:

- a. Implementing the Remedial Action as defined in the Consent Decree;
- b. Verifying any data or information submitted to the EPA pursuant to the Consent Decree;
- c. Verifying that no action is being taken on the Property in violation of the terms of this Easement; and
- d. Monitoring the Remedial Action and conducting investigations related to the Remedial Action including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples.

4. Reserved Rights of Grantor: Grantor hereby reserves unto itself, its successors, transferees, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the exercise of the rights granted herein.

5. No Public Access and Use: No right of access or use by the general public to any portion of the Property is intended by the parties or is conveyed by this Easement.

6. Enforcement: The Grantee and its successors, transferees, and assigns shall be entitled to enforce the terms of this Easement by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument shall not be deemed to be a waiver by the Grantee of such term or any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this Easement.

7. Third Party Beneficiary: The Grantor on behalf of itself and its successors, transferees, and assigns and the Grantee on behalf of itself and its successors, transferees, and assigns hereby agree that the EPA shall be a third party beneficiary of the benefits and rights conveyed to the Grantee in this Easement.

8. Waiver of Certain Defenses: Grantor on behalf of itself and its successors, transferees, and assigns hereby waives any defense of laches, estoppel, or prescription.

9. Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor has a good and lawful right and power to make this Easement.

10. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other under this Easement shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

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11. Controlling Law: The interpretation and performance of this Easement shall be governed by the laws of the United States or if there is no applicable federal law, by the law of the State of Washington.

12. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purpose of CERCLA, 42 U.S.C. § 9601 et seq. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

13. Severability: If any provision of this Easement, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

14. Entire Agreement: This Easement sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the foregoing Agreement, and acknowledged the said Agreement to be the free and



voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said Agreement.

WITNESS MY HAND and official seal hereto affixed the day and year written above.

Notary Public in and for the  
State of

My Commission Expires:

This Agreement is accepted this \_\_\_\_ day of  
, 19 .

J:

By:  
Its:

APPENDIX I

LEASE PROHIBITION

The following language, or such other language that EPA approves in writing pursuant to Paragraph 27(e) of the Consent Decree, shall be included in any lease of Property described in Appendix F:

[Additional] Right of Access and Re-Entry.

[In addition to any right of access and/or re-entry described in this Lease], Lessor and the United States Environmental Protection Agency ("EPA"), or their designees, shall have an irrevocable, permanent, and continuing right of access to the Property at reasonable times and in a reasonable manner for the purposes of:

- (a) Implementing the Remedial Action as defined in the Consent Decree;
- (b) Verifying any data or information submitted to the EPA pursuant to the Consent Decree;
- (c) Verifying that no action is being taken on the Property in violation of the terms of this Agreement; and
- (d) Monitoring the Remedial Action and conducting investigations related to the Remedial Action including, without limitation, sampling of air, water, sediments, soils, and, specifically, without limitation, obtaining split or duplicate samples.

Environmental Protection Requirement.

Lessee hereby covenants and agrees that Lessee, its employees, representatives, and agents, [where such is allowed under the Lease, add one or more of the following: successors, assigns, sublessees, and subtenants] shall not:

- (a) Unless approved by EPA, develop the Property for residential use or used for residential purposes.
- (b) Unless approved by EPA, take or suffer no action which may (i) expose contaminated soil to the environment; or (ii) disturb the integrity or effectiveness of any surface cap on the Property where the disturbance causes the release or threatened release to the environment of hazardous substances in excess of Site cleanup standards regardless of whether such cap was established as a requirement of the ROD.

- (c) Unless approved by EPA, use groundwater from the restricted use area of the Pioneer Builders Supply Property, as determined during Remedial Design as a drinking water source until groundwater cleanup levels are achieved as defined in Section VII of the SOW.

Enforcement.

The Lessee hereby covenants and agrees that the Lessor shall have a continuing right to enforce the terms and conditions of the Right of Access and Re-entry and the Environmental Protection Requirement Sections of this lease by resort to specific performance or legal process, and that the Lessee's failure to satisfy the terms and conditions of such sections shall render this Lease void. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity. Enforcement of the terms of this Lease shall be at the discretion of the Lessor, and any forbearance, delay or omission to exercise its rights under this Lease shall not be deemed to be a waiver by the Lessor of such term or any subsequent breach of the same or any other term, or of any of the rights of the Lessor under this.

[Notice Requirements]

[Where assignment, subleases, or subtenancies are allowed, add the following: At least 30 days prior to any [sublease, subtenancy, or conveyance] of an interest in the Property, Lessee shall give written notice of the Consent Decree to the [sublessee, subtenant, or grantee] and written notice to EPA of the proposed [sublease, subtenancy, or conveyance,] including the name and address of the [sublessee, subtenant, or grantee,] and the date on which notice of the Consent Decree was given.]

Third Party Beneficiary.

The Lessor and the Lessee hereby agree that the EPA shall be a third party beneficiary of all the benefits and rights reserved and retained by the Lessor in the Environmental Protection Requirement and Enforcement Sections of this Lease.

Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee.

The Parties intend these restrictive covenants, conditions, and restrictions to run with the land and to be binding upon the Grantor and its successors, transferees, and assigns for the benefit of the Grantee and its successors, transferees, and assigns.

3. Environmental Protection Access Easement: Grantor on behalf of itself and its successors, transferees, and assigns hereby conveys and quit claims to the Grantee and its successors, transferees, and assigns a non-exclusive, perpetual easement to enter the Property at reasonable times and in a reasonable manner. The purposes of such access are:

- a. Implementing the Remedial Action as defined in the Consent Decree;
- b. Verifying any data or information submitted to the EPA pursuant to the Consent Decree;
- c. Verifying that no action is being taken on the Property in violation of the terms of this Easement; and
- d. Monitoring the Remedial Action and conducting investigations related to the Remedial Action including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples.

4. Reserved Rights of Grantor: Grantor hereby reserves unto itself, its successors, transferees, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the exercise of the rights granted herein.

5. No Public Access and Use: No right of access or use by the general public to any portion of the Property is intended by the parties or is conveyed by this Easement.

6. Enforcement: The Grantee and its successors, transferees, and assigns shall be entitled to enforce the terms of this Easement by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument shall not be deemed to be a waiver by the Grantee of such term or any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this Easement.

7. Third Party Beneficiary: The Grantor on behalf of itself and its successors, transferees, and assigns and the Grantee on behalf of itself and its successors, transferees, and assigns hereby agree that the EPA shall be a third party beneficiary of the benefits and rights conveyed to the Grantee in this Easement.

8. Waiver of Certain Defenses: Grantor on behalf of itself and its successors, transferees, and assigns hereby waives any defense of laches, estoppel, or prescription.

9. Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor has a good and lawful right and power to make this Easement.

10. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other under this Easement shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Controlling Law: The interpretation and performance of this Easement shall be governed by the laws of the United States or if there is no applicable federal law, by the law of the State of Washington.

12. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purpose of CERCLA, 42 U.S.C. § 9601 et seq. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

13. Severability: If any provision of this Easement, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

14. Entire Agreement: This Easement sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the foregoing Agreement, and acknowledged the said Agreement to be the free and

voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said Agreement.

WITNESS MY HAND and official seal hereto affixed the day and year written above.

Notary Public in and for the  
State of

My Commission Expires:

This Agreement is accepted this \_\_\_\_ day of  
, 19 .

By:  
Its:

J:



APPENDIX I

LEASE PROHIBITION

The following language, or such other language that EPA approves in writing pursuant to Paragraph 27(e) of the Consent Decree, shall be included in any lease of Property described in Appendix F:

[Additional] Right of Access and Re-Entry.

[In addition to any right of access and/or re-entry described in this Lease], Lessor and the United States Environmental Protection Agency ("EPA"), or their designees, shall have an irrevocable, permanent, and continuing right of access to the Property at reasonable times and in a reasonable manner for the purposes of:

- (a) Implementing the Remedial Action as defined in the Consent Decree;
- (b) Verifying any data or information submitted to the EPA pursuant to the Consent Decree;
- (c) Verifying that no action is being taken on the Property in violation of the terms of this Agreement; and
- (d) Monitoring the Remedial Action and conducting investigations related to the Remedial Action including, without limitation, sampling of air, water, sediments, soils, and, specifically, without limitation, obtaining split or duplicate samples.

Environmental Protection Requirement.

Lessee hereby covenants and agrees that Lessee, its employees, representatives, and agents, [where such is allowed under the Lease, add one or more of the following: successors, assigns, sublessees, and subtenants] shall not:

- (a) Unless approved by EPA, develop the Property for residential use or used for residential purposes.
- (b) Unless approved by EPA, take or suffer no action which may (i) expose contaminated soil to the environment; or (ii) disturb the integrity or effectiveness of any surface cap on the Property where the disturbance causes the release or threatened release to the environment of hazardous substances in excess of Site cleanup standards regardless of whether such cap was established as a requirement of the ROD.

- (c) Unless approved by EPA, use groundwater from the restricted use area of the Pioneer Builders Supply Property, as determined during Remedial Design as a drinking water source until groundwater cleanup levels are achieved as defined in Section VII of the SOW.

#### Enforcement.

The Lessee hereby covenants and agrees that the Lessor shall have a continuing right to enforce the terms and conditions of the Right of Access and Re-entry and the Environmental Protection Requirement Sections of this lease by resort to specific performance or legal process, and that the Lessee's failure to satisfy the terms and conditions of such sections shall render this Lease void. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity. Enforcement of the terms of this Lease shall be at the discretion of the Lessor, and any forbearance, delay or omission to exercise its rights under this Lease shall not be deemed to be a waiver by the Lessor of such term or any subsequent breach of the same or any other term, or of any of the rights of the Lessor under this.

#### [Notice Requirements]

[Where assignment, subleases, or subtenancies are allowed, add the following: At least 30 days prior to any [sublease, subtenancy, or conveyance] of an interest in the Property, Lessee shall give written notice of the Consent Decree to the [sublessee, subtenant, or grantee] and written notice to EPA of the proposed [sublease, subtenancy, or conveyance,] including the name and address of the [sublessee, subtenant, or grantee,] and the date on which notice of the Consent Decree was given.]

#### Third Party Beneficiary.

The Lessor and the Lessee hereby agree that the EPA shall be a third party beneficiary of all the benefits and rights reserved and retained by the Lessor in the Environmental Protection Requirement and Enforcement Sections of this Lease.